

appellant argued that the Office received her request for reconsideration within one year of the September 24, 2004 decision.¹

FACTUAL HISTORY

On April 4, 1997 appellant, then a 48-year-old social services assistant, filed a traumatic injury claim alleging that she injured her back and bruised her head, chest, arm, foot and leg in an automobile accident. On June 25, 1997 her claim was accepted for neck sprain and multiple contusions. On March 7, 1998 while totally disabled for work because of employment-related depression, appellant filed a claim for recurrence of disability alleging that she continued to have symptoms, including carpal tunnel syndrome, related to her automobile accident. The Office denied her claim on May 20, 1998 and, following requests for reconsideration, denied modification of this decision on March 15, 1999, April 19, 2000, June 9, 2001, February 26, 2002, May 2 and October 1, 2003.

On April 30, 2004 appellant filed a request for reconsideration of the Office's May 2, 2003 decision on the basis of new medical evidence. By merit decision dated September 24, 2004, the Office denied modification of its previous denial on the grounds that the new evidence did not establish appellant's claimed recurrence of disability. On an appeal request form dated September 16, 2005, appellant requested reconsideration of the Office's September 24, 2004 decision. This form was not date-stamped as received by the Office and the envelope in which it was sent was not included in the record. Appellant included a letter, dated September 1, 2005, in which she made arguments about the processing of her claim and the medical evidence already of record. She attached copies of various medical and administrative records related to her case.

By decision dated November 1, 2006, the Office issued a nonmerit decision denying appellant's request for reconsideration of the merits of its September 24, 2004 decision. It stated that it conducted only a limited review of appellant's request for reconsideration, which had not been received until September 30, 2005,² more than one year after the issuance of the previous decision. The Office stated that, in accordance with 20 C.F.R. § 10.607(b), it reviewed appellant's request only for clear evidence that the September 24, 2004 decision was incorrect. It noted that appellant had submitted no new evidence and that all previous evidence had been found insufficient to warrant acceptance of additional conditions arising from the employment injury or a recurrence of disability.

¹ Appellant submitted new factual evidence along with her notice of appeal. As these documents were not a part of the record at the time the Office made its final decision, the Board is precluded from reviewing the evidence. 20 C.F.R. § 501.2(c).

² The Board notes that the request and its accompanying documents were scanned into the Office's electronic records system between September 26 and October 4, 2005. Most of the documents were scanned in on September 30, 2005.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,³ the Office has the discretion to reopen a case for review on the merits.⁴ An application for reconsideration of a final decision must be sent within one year of the date of the decision for which review is sought.⁵ If submitted by mail, the application will be deemed timely if postmarked by the U.S. Postal Service within the time period allowed. If there is no such postmark, or it is not legible, other evidence such as (but not limited to) certified mail receipts, certificate of service, and affidavits, may be used to establish the mailing date.⁶ In the absence of this evidence, the Office procedures state that the date of the reconsideration request letter should be used to determine timeliness.⁷

ANALYSIS

On September 24, 2004 the Office issued a merit decision denying modification of its previous decision. Appellant had one year from that date to file her request for reconsideration. In computing a time period, the date of the event from which the designated period begins is not included, while the last day of the period so computed is included, unless it is a Saturday, Sunday or a legal holiday.⁸ The Board notes that September 24, 2005 fell on a Saturday and therefore finds that appellant had until Monday, September 26, 2005 to request reconsideration.

The Office found that appellant's request for reconsideration was untimely as it was not received until September 30, 2004. The Board has held that timeliness for a reconsideration request is determined not by the date the Office receives the request, but by the postmark on the envelope.⁹ While the record contains a signed appeal request form dated September 16, 2005 and a signed letter dated September 1, 2005 it does not contain the envelope, or a copy of the envelope, in which these documents were sent. It is not possible for the Board to review the postmark indicating when the reconsideration request was mailed to the Office. When the record does not contain the postmarked envelope or the postmark is illegible, the Office procedures state that other evidence, including the date of the request, should be used to determine timeliness of the request.¹⁰ As the record contains no postmarked envelope and no other evidence of mailing date, the Board finds that the date of the reconsideration request should be

³ 5 U.S.C. §§ 8101-8193

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.607(a)

⁶ *Id.*

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b)(1) (June 2002).

⁸ *Afegalai L. Boone*, 53 ECAB 533, 537 (2002).

⁹ *Jack D. Johnson*, 57 ECAB ____ (Docket No. 06-433, issued May 17, 2006); *see also* 20 C.F.R. § 10.607(a); Federal (FECA) Procedure Manual, *supra* note 7.

¹⁰ *Id.*

used to determine timeliness. The appeal form was dated September 16, 2005, which is within a year of the September 24, 2004 decision. The Board finds that appellant timely filed her request for reconsideration within one year of the last merit decision and that the Office improperly reviewed her request using the legal standard reserved for cases where reconsideration is requested after more than one year.

CONCLUSION

As appellant's request for reconsideration was timely filed, the Board finds that the Office did not properly deny appellant's request for reconsideration as untimely filed and failed to establish clear evidence of error. The case is remanded to the Office for the application of the proper standard for timely reconsideration requests, pursuant to 20 C.F.R. § 10.606(b)(2).

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for action consistent with this decision.

Issued: May 14, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board