

**United States Department of Labor
Employees' Compensation Appeals Board**

L.R., Appellant)	
)	
and)	Docket No. 10-2410
)	Issued: April 6, 2011
DEPARTMENT OF AIR FORCE,)	
TINKER AIR FORCE BASE, OK, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On September 24, 2010 appellant filed a timely appeal of the May 19, 2010 decision of the Office of Workers' Compensation Programs denying her request for reconsideration on the grounds that it was untimely and failed to establish clear evidence of error. She also requested an oral argument in the matter. This was docketed as appeal No. 10-2410.

On August 20, 2008 appellant filed a claim for twisted bowel and abdominal hernia due to her employment activities. By decision dated January 26, 2009, the Office denied her claim on the grounds that the medical evidence was insufficient to establish that the claimed conditions were causally related to the established work-related event(s).

In a January 15, 2010 letter, received by the Office February 2, 2010, appellant stated that she disagreed with the denial of her claim and alleged her physician did not know the requirements of or the strenuous nature of her job. She described her job duties and set forth allegations as to how her job caused and/or contributed to her twisted bowel and abdominal hernia, for which she underwent surgery on June 10, 2008. Appellant stated, "I was also told that I could have my claim reconsidered. This is my letter stating that this injury could have only happened by doing my job installing engine mounts." On February 26 and March 19, 2010

appellant telephoned the Office to verify if it received her reconsideration request.¹ On March 22, 2010 she submitted a reconsideration request *via* an appeal request form. The Office acted on the March 22, 2010 request for reconsideration and issued its May 19, 2010 decision.

The Board has considered the matter and finds that appellant's January 15, 2010 letter constituted a request for reconsideration. The Board has held that, while no special form is required, there may be a request for reconsideration when such request is made in writing, identifies the decision and the specific issue for which reconsideration is being requested, and is accompanied by evidence or argument not considered previously.² The January 15, 2010 letter mentioned the word reconsideration and appellant noted her disagreement with the Office's decision. Furthermore, her January 15, 2010 letter referenced the claim number and referenced the denial of her claim. The Board finds that appellant's January 15, 2010 letter constituted a request for reconsideration.

The Board additionally finds that the January 15, 2010 request constituted a timely request for reconsideration. A right to reconsideration within one-year accompanies any merit decision on the issues, including a decision issued by the Board.³ Office procedures, at Chapter 2.1602.3(b)(1), provide that timeliness for a reconsideration request is determined not by the date the Office receives the request, but by the postmark on the envelope.⁴ These procedures provide that, if the postmark or other evidence establishing the date of mailing is not available, the date of the letter itself should be used.⁵ The Board finds that, since the Office did not retain the envelope containing the January 15, 2010 letter and there is no other evidence to establish the date of mailing, the timeliness of the request will be determined by the date of the letter, January 15, 2010. The Board notes that appellant's request was within one year of the Office's January 26, 2009 decision. As appellant's request was timely, the Office improperly denied appellant's request by applying the legal standard reserved for cases where reconsideration is requested after more than one year. The Board will set aside the May 19, 2010 decision and remand the case for consideration of appellant's reconsideration request under the standard for timely reconsideration requests.⁶ After such further development as the Office deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.⁷

¹ In her initial call, appellant referred to her letter as an appeal but, when asked by the claims examiner what type of appeal, she indicated it was a reconsideration request.

² See *Jack D. Johnson*, 57 ECAB 593 (2006) and cases cited therein.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b)(1) (January 2004); *Robert F. Stone*, 57 ECAB 292 (2005); *Larry J. Lilton*, 44 ECAB 243 (1992).

⁴ Federal (FECA) Procedure Manual, *id.* See 20 C.F.R. § 10.607(a).

⁵ Federal (FECA) Procedure Manual, *id.* See *Donna M. Campbell*, 55 ECAB 241 (2004).

⁶ See 20 C.F.R. § 10.606(b).

⁷ In light of the disposition of this matter, appellant's request for oral argument is moot.

IT IS HEREBY ORDERED THAT the May 19, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order of the Board.

Issued: April 6, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board