

FACTUAL HISTORY

On December 20, 2007 appellant, then a 53-year-old air transportation specialist, filed an occupational disease claim (Form CA-2) claiming that she sustained an emotional condition on or before April 18, 2007 due to unreasonable work assignments and a pattern of harassment by her supervisor. The Office advised appellant of the evidence needed to establish her claim. Appellant submitted statements and employing establishment memoranda regarding her factual allegations. She also submitted reports from an attending clinical psychologist discussing her account of events.

By decision dated June 24, 2008, the Office denied the claim on the grounds that appellant failed to establish any compensable employment factors. Appellant requested an oral hearing, held November 7, 2008. After the hearing, counsel submitted additional medical and factual evidence. By decision dated January 26, 2009, an Office hearing representative affirmed the June 24, 2008 decision, finding that appellant had not established any compensable factors of employment.

In a letter dated January 22, 2010 and received on January 29, 2010, appellant, through counsel, requested reconsideration of the Office's January 26, 2009 decision. Counsel submitted an attending clinical psychologist's report discussing the identified work factors.

By decision dated February 9, 2010, the Office denied appellant's January 22, 2010 request for reconsideration on the grounds that it was untimely filed and failed to present clear evidence of error. It found that her January 22, 2010 request was untimely as it was filed on January 29, 2010, more than one year after the January 26, 2009 decision. The Office further found that counsel's January 22, 2010 letter and accompanying evidence did not establish that the Office erred in denying appellant's emotional condition claim.

LEGAL PRECEDENT

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of the Federal Employees' Compensation Act.¹ It will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.² When an application for review is not timely filed, the Office must nevertheless undertake a limited review to determine whether the application establishes "clear evidence of error."³ Office regulations and procedure provide that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's application for review shows "clear evidence of error" on the part of the Office.⁴

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.607(b); *Gladys Mercado*, 52 ECAB 255 (2001).

³ *Id.* at § 10.607(b); *D.D.*, 58 ECAB 206 (2006).

⁴ *Id.* at § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3d (January 2004).

ANALYSIS

The Office's February 9, 2010 decision denied appellant's request for further review of the merits of her claim on the grounds that her January 22, 2010 reconsideration request was untimely filed and failed to establish clear evidence of error in the January 26, 2009 decision denying her emotional condition claim. The Board finds, however, that appellant's request for reconsideration was timely filed.

The one-year time limitation for requesting reconsideration begins to run on the date following the date of the original Office decision.⁵ A right to reconsideration within one year accompanies any merit decision on the issues.⁶ Office regulations and procedures 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.⁷ The Office's procedures require that a copy of the envelope that enclosed the request for reconsideration should be in the case record. If there is no postmark or it is not legible, other evidence such as a certified mail receipt, a certificate of service and affidavits may be used to establish the mailing date. In the absence of such evidence, the date of the letter itself should be used.⁸

The Board notes that the envelope containing the reconsideration request was not retained in the record and the letter requesting reconsideration was dated January 22, 2010. For this reason the Board finds that the reconsideration request dated January 22, 2010 was timely filed within one year of the January 26, 2009 merit decision. The Office improperly denied appellant's reconsideration request by applying the legal standard reserved for cases where reconsideration is requested after more than one year. Since it erroneously reviewed the evidence submitted in support of appellant's reconsideration request under the clear evidence of error standard, the Board will remand the case for review of this evidence under the proper standard of review for a timely reconsideration request.⁹

On appeal, counsel asserted that his January 22, 2010 request for reconsideration was timely filed within one year of a January 26, 2009 merit decision. As noted, the Board finds that his January 22, 2009 request for reconsideration was timely filed. The case will be remanded for a review of the evidence under the appropriate standard.

CONCLUSION

The Board finds that appellant's January 22, 2010 request for reconsideration was timely filed.

⁵ Federal (FECA) Procedure Manual, *supra* note 4 at Chapter 2.1602.3(a) (January 2004).

⁶ *Id.*; *Larry J. Lilton*, 44 ECAB 243 (1992).

⁷ See 20 C.F.R. § 10.607(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b)(1) (January 2004).

⁸ 20 C.F.R. § 10.607(a); see *Jack D. Johnson*, 57 ECAB 593 (2006).

⁹ See *Donna M. Campbell*, 55 ECAB 241 (2004). See also *L.T.*, Docket No. 09-2128 (issued June 7, 2010).

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: February 23, 2011
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