

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

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G.W., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
NATIONAL PROTECTION & PROGRAMS )  
DIRECTORATE, FEDERAL PROTECTION )  
SERVICE, New York, NY, Employer )

\_\_\_\_\_ )

**Docket No. 13-1846**  
**Issued: February 21, 2014**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

On August 5, 2013 appellant, through his attorney, filed a timely appeal from the July 3, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), which found that his reconsideration request was untimely and did not present clear evidence of error. The appeal was docketed as number 13-1846.

By decision dated February 9, 2011, OWCP denied appellant's claim for an occupational injury due to exposure from the dust and toxic fumes in the air caused by the collapse and destruction of the World Trade Center on September 11, 2001. It found the medical evidence insufficient to establish a causal relationship between the claimed medical conditions of asthma and obstructive sleep apnea and his work exposure on and after September 11, 2001.

In a January 20, 2012 letter, appellant requested reconsideration and submitted medical evidence in support of his request. OWCP received the reconsideration request and evidence on January 23, 2012. In a May 24, 2012 letter, appellant requested a decision be rendered on his reconsideration request. In a June 6, 2012 letter, OWCP advised him that a request for reconsideration was never received. Appellant then resubmitted the January 20, 2012 request for reconsideration along with additional medical evidence. By decision dated July 3, 2013, OWCP denied his reconsideration request on the grounds that it was untimely filed and failed to present clear evidence of error on the part of OWCP.

The record reflects that appellant's request for reconsideration was timely. Section 10.607(a) of the implementing regulations provide that an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.<sup>1</sup> The Board notes that the last merit decision was dated February 9, 2011 and appellant's request for reconsideration was originally received by OWCP on January 23, 2012. As appellant's request was received by OWCP on January 23, 2012, it was timely filed.

The Board finds that OWCP improperly reviewed the evidence under section 8128 and the clear evidence of error standard. As appellant made a timely request for reconsideration of the last merit decision, which was dated February 9, 2011, OWCP should have reviewed her request under the standard for a timely request,<sup>2</sup> as opposed to the standard for untimely requests.

The Board will set aside OWCP's July 3, 2013 decision and remand the case for an appropriate final decision on appellant's timely request for reconsideration.

**IT IS HEREBY ORDERED THAT** the July 3, 2013 decision is set aside and remanded.

Issued: February 21, 2014  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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<sup>1</sup> 20 C.F.R. § 10.607(a).

<sup>2</sup> *See id.* at 10.606(b).