

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

R.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 17-0099
Issued: February 1, 2017**

Appearances:
Aaron Aumiller, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

On October 17, 2016² appellant, through counsel, filed a timely appeal from an April 20, 2016 decision of the Office of Workers' Compensation Programs, which found that his January 29, 2016 reconsideration request was untimely filed and failed to demonstrate clear evidence of error. The appeal was docketed as number 17-0099.

OWCP initially denied appellant's occupational disease claim on April 9, 2014. Appellant, through counsel, on April 30, 2014 requested a telephonic hearing before an OWCP hearing representative. An OWCP hearing representative issued a January 29, 2015 decision that

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. 501.3(e)-(f). One hundred and eighty days from April 20, 2016, the date of OWCP's last decision was October 17, 2016. Since using October 21, 2016, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is October 17, 2016, rendering the appeal timely filed. See 20 C.F.R. 501.3(f)(1).

affirmed the April 9, 2014 decision. Counsel requested reconsideration on January 29, 2016, and the request was received on the same date. In its April 20, 2016 decision, OWCP found that the request was untimely filed and failed to present clear evidence of error.

The Board has duly considered the matter and finds 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 decision for which review is sought.³ In this case, appellant sought review of the January 29, 2015 decision and his request for reconsideration was received on Friday, January 29, 2016. In computing the time for requesting reconsideration, the date of the event from which the designated time period begins to run shall not be included when computing the time period. The one-year period begins on the next day after the date of the contested merit decision.⁴ However, the last day of the period shall be included unless it is a Saturday, a Sunday or a legal holiday.⁵ Thus, the time for requesting reconsideration of OWCP's January 29, 2015 decision began to run on January 30, 2015, and ended on January 29, 2016. As such, the reconsideration request was timely, as it was received by OWCP on January 29, 2016, exactly one year after the last merit decision. Because appellant filed a timely reconsideration request, the case will be remanded to OWCP for application of the standard for reviewing timely requests for reconsideration.⁶ The clear evidence of error standard utilized by OWCP in its April 20, 2016 decision is appropriate only for untimely reconsideration requests. After such further development as OWCP deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.

³ 20 C.F.R. § 10.607(a).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

⁵ *Debra McDavid*, 57 ECAB 149 (2005); *John B. Montoya*, 43 ECAB 1148 (1992).

⁶ *See* 20 C.F.R. § 10.606(b).

IT IS HEREBY ORDERED THAT the April 20, 2016 decision is set aside and the case remanded for further action consistent with this order of the Board.

Issued: February 1, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board