

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

S.C., Appellant	)	
	)	
and	)	<b>Docket No. 19-0230</b>
	)	<b>Issued: August 21, 2019</b>
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Richmond, VA, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*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  
JANICE B. ASKIN, Judge

On November 9, 2018 appellant filed a timely appeal from a June 27, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0230.

On December 4, 2015 appellant, then a 54-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral wrist condition due to factors of his federal employment including processing bundles of magazines with a manual cutter. By decision dated February 18, 2016, OWCP denied his claim as it found that he had not met his burden of proof to establish the medical element of fact of injury. By decision dated October 6, 2016, it denied modification finding that appellant had not submitted medical evidence containing a diagnosis related to the accepted employment factors. OWCP, by decision dated May 16, 2017, granted modification finding that he had established a medical diagnosis, but again denied that claim finding that he had not met his burden of proof to establish causal relationship.

On May 21, 2018 appellant requested reconsideration of the May 16, 2017 decision. By decision dated June 27, 2018, it denied reconsideration pursuant to 5 U.S.C. § 8128(a).

Section 10.607(a) of the implementing regulations provides that an application for reconsideration must be received within one year of OWCP's last merit decision for which review is sought.<sup>1</sup> Timeliness is determined by the document receipt date of the request for

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<sup>1</sup> 20 C.F.R. § 10.607(a).

reconsideration as indicated by the received date in the integrated Federal Employees' Compensation System (iFECS).<sup>2</sup> In this case, appellant sought review of the May 16, 2017 decision, but his request for reconsideration was not received into iFECS until May 21, 2018. Thus, his request for reconsideration was received after the expiration of the one-year time limitation from OWCP's last merit decision.

OWCP will consider an untimely application only if the application demonstrates clear evidence of error on the part of its most recent decision. The application must establish, on its face, that the decision was erroneous.<sup>3</sup>

The Board has duly considered the matter and finds that appellant's request for reconsideration was untimely filed. Because appellant filed an untimely reconsideration request, the case will be remanded to OWCP for application of the correct standard of review which is applied to untimely reconsideration requests, the clear evidence of error standard.<sup>4</sup> The standard utilized by OWCP in its June 27, 2018 decision is appropriate only for timely reconsideration requests. After such further development as OWCP deems necessary, it shall issue an appropriate decision. Accordingly,

**IT IS HEREBY ORDERED THAT** the June 27, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

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<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

<sup>3</sup> *Id.* at § 10.607. *See also* C.B., Docket No. 17-0933 (issued July 17, 2017); A.B., Docket No. 15-0521 (issued June 13, 2016).

<sup>4</sup> *Id.* at § 10.606(b).

Issued: August 21, 2019  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board