

Decisions, decisions, decisions, Part 6: Reconsiderations

This month's article continues our series on the different avenues of appeal available to contest adverse decisions from OWCP. A claimant may ask OWCP to reconsider any merit decision (e.g., a decision establishing, denying or terminating a benefit) made by OWCP. The decisions can include:

- The initial decision by the OWCP district office.
- A decision by an OWCP hearing representative following an oral hearing or review of the written record.
- A decision by the ECAB.
- A previous reconsideration decision.
- A merit decision issued by OWCP following an ECAB decision.

The request requires no special form but should clearly state that the claimant is making application for reconsideration and state the date of the decision to be reconsidered. Every page of the request also should have the claim number written on the top of the page. The request should contain the word "reconsideration" on the outside of the mailing envelope and should be sent to the address indicated by OWCP in the formal decision being contested.

The reconsideration request must be received by OWCP within one year of the date that the office issued the contested formal decision.¹ In the past, OWCP followed what was called the "mailbox rule" in reconsideration requests. Simply put, the reconsideration request would be considered timely made if properly addressed and postmarked within one year of the date of the contested decision. This changed when OWCP issued its new implementing regulations that became effective on Aug. 29, 2011. Now OWCP has to *receive* the application within one year:

20 CFR 10.607(a) An application for reconsideration must be received by OWCP within one year of the date of the OWCP decision for which review is sought.

Any request for reconsideration should be sent well before the end of the one-year period to ensure that OWCP will acknowledge its receipt within one year.

Reconsideration requests can also be made through the ECOMP online portal.² This is an effective and efficient avenue to submit the request, especially if the claimant is close to the end of the one-year period.

OWCP's authority to grant reconsiderations is found in the FECA at 5 USC 8128(a). Claimants, however, do not have an absolute right to reconsideration. Section 8128(a) does not mandate that OWCP reconsider a decision simply upon request.³ Whether or not OWCP grants reconsideration depends on whether or not the claimant timely meets at least one of the requirements found in the implementing regulations found at 20 CFR 10.606(b)(3). The application

for reconsideration, including all supporting documents, must be submitted in writing and be signed by and dated by the claimant or the authorized representative. It also must set forth arguments and contain evidence that either:

- Shows that OWCP erroneously applied or interpreted a specific point of law; or
- Advances a relevant legal argument not considered by OWCP; or
- Constitutes relevant and pertinent new evidence not previously considered by OWCP.

When OWCP grants an application for reconsideration, a claims examiner who did not participate in making the contested decision will re-examine all of the evidence and arguments in the claim file to determine whether they support modification of the prior decision and a new merit decision will be made. If the new decision is adverse, the claims examiner will advise the claimant of his or her rights to again request reconsideration or to appeal to the ECAB.

If OWCP decides that the argument or evidence submitted with the request is insufficient to warrant reconsideration, the claimant will be advised of his or her appeal rights to again request reconsideration or to appeal to the ECAB. It is important to note, however, that a denial for reconsideration is not a merit decision; any new request for reconsideration must be made within one year of the last merit decision of record.

Next month's column will continue the discussion of reconsideration by examining in more detail what sorts of argument or evidence a successful application for reconsideration should contain.

1. OWCP will consider an untimely request for reconsideration only if the request demonstrates clear evidence of error on the part of OWCP in its most recent merit decision. A future column will discuss this in more detail.

2. See the November 2012 Compensation column in *The Postal Record* for a discussion on how to use ECOMP.

3. 5 USC 8128 does not permit OWCP to deny requests without at least a limited review of the request and any submitted evidence in order to determine whether there was some error it made in its decision.