

§ 10.605

20 CFR Ch. I (4-1-07 Edition)

RECONSIDERATIONS AND REVIEWS BY THE DIRECTOR

§ 10.605 What is reconsideration?

The FECA provides that the Director may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."

§ 10.606 How does a claimant request reconsideration?

(a) An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by OWCP in the final decision.

(b) The application for reconsideration, including all supporting documents, must:

- (1) Be submitted in writing;
- (2) Set forth arguments and contain evidence that either:
 - (i) Shows that OWCP erroneously applied or interpreted a specific point of law;
 - (ii) Advances a relevant legal argument not previously considered by OWCP; or
 - (iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.

§ 10.607 What is the time limit for requesting reconsideration?

(a) An application for reconsideration must be sent within one year of the date of the OWCP decision for which review is sought. If submitted by mail, the application will be deemed timely if postmarked by the U.S. Postal Service within the time period allowed. If there is no such postmark, or it is not legible, other evidence such as (but not limited to) certified mail receipts, certificate of service, and affidavits, may be used to establish the mailing date.

(b) OWCP will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of OWCP in its most recent merit decision. The ap-

plication must establish, on its face, that such decision was erroneous.

(c) The year in which a claimant has to timely request reconsideration shall not include any period subsequent to an OWCP decision for which the claimant can establish through probative medical evidence that he or she is unable to communicate in any way and that his or her testimony is necessary in order to obtain modification of the decision.

§ 10.608 How does OWCP decide whether to grant or deny the request for reconsideration?

(a) A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in § 10.606(b)(2). If reconsideration is granted, the case is reopened and the case is reviewed on its merits (see § 10.609).

(b) Where the request is timely but fails to meet at least one of the standards described in § 10.606(b)(2), or where the request is untimely and fails to present any clear evidence of error, OWCP will deny the application for reconsideration without reopening the case for a review on the merits. A decision denying an application for reconsideration cannot be the subject of another application for reconsideration. The only review for this type of non-merit decision is an appeal to the ECAB (see § 10.625), and OWCP will not entertain a request for reconsideration or a hearing on this decision denying reconsideration.

§ 10.609 How does OWCP decide whether new evidence requires modification of the prior decision?

When application for reconsideration is granted, OWCP will review the decision for which reconsideration is sought on the merits and determine whether the new evidence or argument requires modification of the prior decision.

(a) After OWCP decides to grant reconsideration, but before undertaking the review, OWCP will send a copy of the reconsideration application to the employer, which will have 20 days from the date sent to comment or submit