

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOAN S. O'BRIEN and DEPARTMENT OF THE NAVY,  
NAVAL SUPPLY CENTER, San Diego, CA

*Docket No. 97-2565; Submitted on the Record;  
Issued August 4, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on the grounds that it was not timely filed and did not contain clear evidence of error.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits.

This is the second appeal in this case. By decision dated January 22, 1996,<sup>1</sup> the Board found that the Office had not abused its discretion by refusing to reopen appellant's claim for consideration of the merits. The Board noted that, as appellant had not requested an appeal within one year of the August 5, 1992 merit decision, the Board lacked jurisdiction to review the merits of appellant's claim. The facts and circumstances of the case as set out in the Board's prior decision are adopted herein by reference.

Following the Board's January 22, 1996 nonmerit decision, appellant requested reconsideration on March 11, 1997. The Office denied reopening appellant's claim for consideration of the merits on April 8, 1997 finding that her request for reconsideration was not timely filed and did not contain clear evidence of error.

The only decision before the Board on this appeal is that of the Office dated April 8, 1997 in which it declined to reopen appellant's case on the merits because the request was not timely filed and did not show clear evidence of error. Since more than one year elapsed from the date of issuance of the Office's August 5, 1992 merit decision to the date of the filing of appellant's appeal, on July 22, 1997, the Board lacks jurisdiction to review that decision.<sup>2</sup>

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<sup>1</sup> Docket No. 94-930.

<sup>2</sup> See 20 C.F.R. § 501.3(d).

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of the Federal Employees' Compensation Act.<sup>3</sup> The Office will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.<sup>4</sup> When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.<sup>5</sup>

Since more than one year elapsed from the August 5, 1992 decision to appellant's March 11, 1997 application for review, the request for reconsideration is untimely. The evidence submitted by appellant does not raise a substantial question as to the correctness of the Office's last merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim. Appellant submitted additional medical reports dated January 21, 1997 and July 2, 1996. These reports offered the opinion that appellant's sensitization to formaldehyde and other chemicals occurred in the workplace. While this evidence is supportive of appellant's claim, it is not sufficient to establish error on the part of the Office at the time it issued its prior decisions as the evidence does not contain the necessary medical rationale to establish a causal relationship between appellant's diagnosed condition and her employment. Given the limited probative value of this evidence, it is not sufficient to clearly show that the Office erred when it denied appellant's claim.<sup>6</sup>

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<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.138(b)(2). *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

<sup>5</sup> *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>6</sup> *Annie L. Billingsley*, 50 ECAB \_\_\_\_ (Docket No. 96-2547, issued December 24, 1998).

The decision of the Office of Workers' Compensation Programs dated April 8, 1997 is hereby affirmed.

Dated, Washington, D.C.  
August 4, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member