

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JEANNIE DUNCAN and DEPARTMENT OF AGRICULTURE,  
SIX RIVERS NATIONAL FOREST, Eureka, CA

*Docket No. 99-2174; Submitted on the Record;  
Issued October 11, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA A. SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration dated October 8, 1998 was untimely filed and failed to present clear evidence of error.

On October 3, 1996 appellant, then a 30-year-old budget analyst, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on September 23, 1996 she sustained an injury to her left knee when her shoe caught on a rug causing her to lose her balance and her knee buckled under her. She stopped work on September 23, 1996 and returned on October 2, 1996.

In support of the claim appellant submitted medical evidence regarding her left knee, indicating that she had a preexisting condition.

By letter dated August 22, 1997, the Office notified appellant that her claim was accepted for a left knee strain. However, the Office stated that because of a preexisting left knee ligament instability with probable medial and lateral meniscal tears, the claim would be further developed. The Office requested that appellant submit additional factual and medical evidence to support her claim. The Office specifically requested all medical records for the left knee condition which predated the September 23, 1996 work injury. No additional medical evidence was submitted in response to this request.

In a decision dated September 22, 1997, the Office denied appellant's claim as the evidence was not sufficient to establish that her current knee condition was causally related to the September 23, 1996 injury.

By letter dated September 15, 1997, but not received by the Office until October 17, 1997, appellant requested reconsideration and submitted additional factual and medical evidence.

By merit decision dated November 12, 1997, the Office denied modification of its prior decision on the grounds that the evidence submitted was insufficient.

In an October 8, 1998 letter received on October 21, 1998, appellant requested reconsideration and submitted additional medical evidence.

In an October 27, 1998 decision, the Office denied appellant's application for reconsideration on the grounds that the request was untimely and did not present clear evidence of error by the Office.

The Board finds that the case is not in posture for decision.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> As appellant filed her appeal with the Board on January 15, 1999, the only decision properly before the Board is the Office's October 27, 1998 decision denying appellant's request for reconsideration.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>2</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>3</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>4</sup>

In this case, the Office issued a merit reconsideration decision denying appellant's claim on November 12, 1997 on the grounds that the medical evidence was insufficient. On October 21, 1998 the Office received a letter from appellant with additional medical evidence not previously considered by the Office. Appellant requested a reconsideration of the prior decision. The Board finds that under these circumstances the October 21, 1998 letter constituted a timely request for reconsideration.<sup>5</sup> The reconsideration request was clearly received within one year of November 12, 1997.

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<sup>1</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.138(b)(2).

<sup>4</sup> *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>5</sup> See *Vicente P. Taimanglo*, 45 ECAB 504 (1994); see also *Veletta C. Coleman*, 48 ECAB 367 (1997) (a right to reconsideration within one year accompanies any merit decision on the issues).

As appellant's request for reconsideration of the Office's decision was timely, the Office must evaluate the request under the appropriate standard.<sup>6</sup> The "clear evidence of error" standard utilized in this case is appropriate only for untimely reconsideration requests.<sup>7</sup> Accordingly, the case will be remanded to the Office for proper consideration of appellant's timely request for reconsideration. After such further development as it deems necessary, the Office should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated October 27, 1998 is reversed, and the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.  
October 11, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla A. Schwab  
Alternate Member

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<sup>6</sup> Although it is a matter of discretion on the part of the Office whether to review an award for or against the payment of compensation, the Office has stated that a claimant may obtain review of the merits of a claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office; *see* 20 C.F.R. § 10.138(b)(1).

<sup>7</sup> *See Algimatas Bumelis*, 48 ECAB 679 (1997).