

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY D. WALKER and U.S. POSTAL SERVICE,
POST OFFICE, Rockford, IL

*Docket No. 00-1385; Submitted on the Record;
Issued July 9, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was untimely and failed to show clear evidence of error.

The Office accepted that appellant sustained a lumbosacral sprain, ruptured C4-5 disc, and chipped teeth in the performance of duty on January 27, 1967. By decision dated October 24, 1996, the Office terminated compensation on the grounds that appellant had refused an offer of suitable work under 5 U.S.C. § 8106(c)(2).

In a decision dated November 17, 1999, the Office determined that appellant had submitted an untimely request for reconsideration that did not show clear evidence of error.

The Board finds that appellant submitted a timely request for reconsideration.

With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.¹ As appellant filed his appeal on February 11, 2000, the only decision over which the Board has jurisdiction on this appeal is the November 17, 1999 decision denying his request for reconsideration.

Section 8128(a) of the Federal Employees' Compensation Act² does not entitle a claimant to a review of an Office decision as a matter of right.³ This section vests the Office with discretionary authority to determine whether it will review an award for or against

¹ See 20 C.F.R. § 501.3(d).

² 5 U.S.C. § 8128(a).

³ *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

compensation.⁴ The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, the Office has stated that it 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.⁵ The Board has found that the imposition of this one-year limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).⁶

According to the November 17, 1999 Office decision, appellant's letter requesting reconsideration was dated August 11, 1997, but was not received until September 28, 1999. The record does contain an August 11, 1997 letter that apparently was sent by facsimile on September 28, 1999. The Office fails to acknowledge, however, that the record contains additional evidence with respect to receipt of the August 11, 1997 letter. By letter dated August 27, 1997, the district director of the Dallas, Texas regional Office, advised appellant that the August 11, 1997 letter had been referred to him for response.⁷ The district director noted that appellant had referred to a prior request for reconsideration, but the record did not contain a prior request. The August 27, 1997 letter concludes that "we will acknowledge your request for a reconsideration and will be assigning your case to a senior claims examiner for this action."

The Board finds that the August 11, 1997 letter is a request for reconsideration that was timely received by the Office no later than August 27, 1997. It is therefore, a timely reconsideration request filed within one year of the October 24, 1996 final Office decision. The Office improperly reviewed the request for reconsideration under the "clear evidence of error" standard applicable to untimely reconsideration requests. The case will be remanded to the Office for an appropriate decision on a timely request for reconsideration.⁸

⁴ Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application."

⁵ 20 C.F.R. § 10.607(a).

⁶ See *Leon D. Faidley, Jr.*, *supra* note 3.

⁷ The August 11, 1997 letter had been sent Thomas Markey, Director of the Office and was referred to a district director.

⁸ 20 C.F.R. § 10.606(b).

The decision of the Office of Workers' Compensation Programs dated November 17, 1999 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
July 9, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member