

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ORA AL-KHOURI and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Jacksonville, FL

*Docket No. 00-632; Submitted on the Record;
Issued May 16, 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 abused its discretion in denying appellant's request for reconsideration under section 8128(a) of the Federal Employees' Compensation Act on the grounds that the request was not timely filed within the one-year time limitation period under section 10.607(a) of the implementing regulations.

This is the second appeal in the present case. In a March 25, 1996 decision, the Board affirmed the Offices' decision dated October 14, 1993. The Board found that appellant submitted no rationalized medical evidence establishing that she sustained any medical condition of the right hand causally related to her employment and, therefore, failed to meet her burden. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.¹

On December 11, 1996 appellant filed a Form CA-7, claim for compensation on account of traumatic injury or occupational disease for her left wrist, claiming compensation for wage loss from June 1, 1991 through December 1996.²

By letter dated January 7 and February 13, 1997, the Office requested that appellant submit additional factual and medical evidence to support her claim. Appellant submitted additional medical evidence.

In a decision dated March 13, 1997, the Office denied appellant's claim for compensation on the grounds that the evidence failed to demonstrate that appellant was totally disabled for the period claimed as a result of a compensable condition.

¹ Docket No. 94-974 (issued March 25, 1996).

² The record indicates that appellant filed a previous claim for an alleged back injury in September 1994 (No. 06-0606287). This claim was denied in December 1994.

By letter dated March 19, 1997, appellant requested a hearing before an Office hearing representative. The hearing was held on November 20, 1997.

In a decision dated January 14, 1998, the hearing representative affirmed the decision of the Office dated March 13, 1997. The hearing representative determined that the evidence of record was insufficient to establish that appellant was totally disabled for the period claimed as a result of a compensable condition.

By letter dated January 21, 1998, appellant requested an appeal to the Employees' Compensation Appeals Board. The Board issued an order dismissing the appeal based on appellant's request to pursue reconsideration before the Office.³

By letter dated November 3, 1998, appellant requested reconsideration of the Office's decision dated January 14, 1998. She submitted additional medical evidence.

By merit decision dated December 3, 1998, the Office denied modification of its March 13, 1997 decision on the grounds that the evidence submitted was insufficient to warrant modification.

In a letter dated June 7, 1999, appellant requested reconsideration of the decision dated December 3, 1998. She submitted additional medical evidence.

In a July 12, 1999 decision, the Office denied appellant's application for reconsideration on the grounds that the request was not timely and that appellant did not present clear evidence of error by the Office.

In a letter dated July 19, 1999, appellant requested reconsideration. She submitted additional medical evidence.

In an August 11, 1999 decision, the Office denied appellant's application of reconsideration on the grounds that the request was not timely and that appellant did not present clear evidence of error by the Office.

The Board finds that the Office improperly denied appellant's requests for reconsideration under section 8128(a) of the Act on the grounds that the request was not timely filed within the one-year time limitation period under section 10.607(a) of the implementing regulations.

Appellant is requesting review of two Office decisions dated July 12 and August 11, 1999.

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.⁴

³ Docket No. 98-1029 (issued October 28, 1998).

⁴ 20 C.F.R. §§ 10.606, 10.607 (1999).

The Board finds that the Office abused its discretion in denying appellant's request for reconsideration under section 8128(a) of the Act on the grounds that the request was not timely filed within the one-year time limitation period under section 10.138(b)(2) of the implementing regulations. Under section 8128(a) of the Act,⁵ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with section 10.606(b)(2) of the implementing federal regulations,⁶ which provides guidelines for the Office in determining whether an application for reconsideration is sufficient to warrant a merit review.⁷ These regulations also provide that the Office will not review a decision denying or terminating a benefit unless the application is filed within one year of the date of that decision.⁸ The Board has held that the imposition of the one-year time limitation period for filing a request for reconsideration is not an abuse of the discretionary authority granted the Office under section 8128(a) of the Act.⁹

With regard to when the one-year time limitation period begins to run, the Office's procedure manual states:

"The one-year [time limitation] period for requesting reconsideration begins on the date of the original [Office] decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following a reconsideration, any decision by the 'Employees' Compensation Appeals Board, and any *de novo* decision following action by the Board, but does not include preresumption hearing/review decisions."¹⁰

The Board has held that Chapter 2.1602.3(b)(1) of the Office's procedure manual should be interpreted to mean that a right to reconsideration within one year accompanies any subsequent merit decision on the issues, including any merit decision by the Board.¹¹

In this case, the Office issued its last merit decision on December 3, 1998. The July 12, 1999 Office decision found that appellant's request for reconsideration dated June 7, 1999 was untimely. However, appellant's request for reconsideration, filed on June 7, 1999, was within one year of the December 3, 1998 merit decision by the Office and was timely. Regarding the August 11, 1999 Office decision, appellants July 19, 1999 request for reconsideration was also timely as it was within one year of the December 3, 1998 decision of the Office.

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b) (1999).

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ 20 C.F.R. § 10.607(a).

⁹ See *Jesus D. Sanchez*, 41 ECAB 964, 966 (1990).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602, para. 3b(1) (May 1996).

¹¹ See *John W. O'Connor*, 42 ECAB 797 (1991).

Since the requests for reconsideration were timely, the Office must evaluate the requests under the appropriate standard.¹² The “clear evidence of error” standard utilized in this case is appropriate only for untimely reconsideration requests. Accordingly, the case will be remanded to the Office for proper consideration of appellant’s timely request for reconsideration of the December 3, 1998 decision. After such further development as it deems necessary, the Office should issue an appropriate decision.

The decisions of the Office of Workers’ Compensation Programs dated August 11 and July 12, 1999 are set aside and the case remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
May 16, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

¹² 20 C.F.R. § 10.607(a).