

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BLAINE KING and DEPARTMENT OF THE ARMY,
FORT RUCKER, AL

*Docket No. 02-212; Submitted on the Record;
Issued May 29, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

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 anxiety and depression as causally related to appellant's federal employment. By decision dated January 19, 1999, the Office also determined that appellant had not established a pancreatitis condition as employment related. In a decision dated April 26, 2000, the Office denied modification.

By letter dated April 26, 2001, appellant requested reconsideration of his claim and submitted additional medical evidence. In a decision dated July 19, 2001, the Office determined that appellant's request for reconsideration was untimely and failed to show clear evidence of error.

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 October 10, 2001, the only decision over which the Board has jurisdiction on this appeal is the July 19, 2001 decision denying his request for reconsideration.

The Board finds that appellant's request for reconsideration was timely.

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

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).

discretionary authority to determine whether it will review an award for or against compensation.⁴ The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a).⁵ 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.⁶ 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).⁷

In this case, the letter requesting reconsideration is dated April 26, 2001. The record does not contain an envelope with a postmark date. If the postmark is not available, the date of the letter is the date of filing.⁸ Therefore April 26, 2001 is the date of the request for the purposes of determining timeliness.

In the July 19, 2001 decision, the Office notes that the last merit decision is dated April 26, 2000, and finds: “To be timely filed, the request for reconsideration needed to be filed by April 25, 2001.” No authority is cited for this conclusion.

The Board has held that a claimant has a full year to request reconsideration. In *John B. Montoya*, the Board found that with respect to a June 19, 1990 merit decision, the time period began to run on the day after the decision, and appellant had until June 19, 1991 to request reconsideration.⁹ In *David Shuler*, a February 20, 1998 request for reconsideration of a February 20, 1997 Office merit decision was held to be timely.¹⁰

Accordingly, the Board finds that in this case appellant had until April 26, 2001 to request reconsideration of the April 26, 2000 Office decision.¹¹ Since appellant’s reconsideration request was filed on April 26, 2001, it is considered timely. The application of the “clear evidence of error” standard to the evidence submitted is appropriate only for untimely

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 Thus, although it is a matter of discretion on the part of the Office whether to review an award for or against 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 specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office; *see* 20 C.F.R. § 10.606(b).

⁶ 20 C.F.R. § 10.607(a).

⁷ *See Leon D. Faidley, Jr., supra* note 3.

⁸ *See Willie H. Walker, Jr.*, 45 ECAB 126 (1993); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602(3)(b) (May 1996).

⁹ 43 ECAB 1148, 1152 (1992).

¹⁰ Docket No. 98-1965 (issued February 22, 2000).

¹¹ Chapter 2.1602(3)(b)(1) of the Office’s procedure manual states that the one-year period begins on the date of the original decision. To the extent that the Office may be interpreting its procedures to reach the conclusion that appellant had until April 25, 2001 to request reconsideration, this is not consistent with Board precedent.

reconsideration requests. The case will, therefore, be remanded to the Office for review of the evidence under the proper standard of review and an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated July 19, 2001 is set aside and the case remanded for action consistent with this decision of the Board.

Dated, Washington, DC
May 29, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member