U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board
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In the Matter of BARBARA FITZGERALD <u>and</u> DEPARTMENT OF VETERANS AFFAIRS, BROOKLYN VETERANS MEDICAL CENTER, Brooklyn, NY

Docket No. 02-1968; Submitted on the Record;
Issued February 27, 2003
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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 denied appellant's request for reconsideration on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

This case has been before the Board previously. By decision dated August 9, 1999, the Board affirmed a May 9, 1997 decision of an Office hearing representative who found that the Office met its burden of proof to terminate appellant's compensation benefits effective January 15, 1997.[1] On September 7, 1999 she filed a petition for reconsideration with the Board. By order dated March 1, 2000, the Board denied appellant's petition. On May 20, 2002 she requested reconsideration with the Office. In a decision dated June 12, 2002, the Office denied appellant's reconsideration request on the grounds that it had not been submitted within one year of the previous decision. The Office further noted that she had submitted no evidence with her request. The instant appeal follows.

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration on the grounds that the request was not timely filed and did not establish clear evidence of error.

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[1] Docket No. 97-2510 (issued August 9, 1999).

Section 8128(a) of the Federal Employees' Compensation Act does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.[2] The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).[3] 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.[4] 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 section 8128(a).[5]

In implementing the one-year time limitation, Office procedures provide that 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.[6] In the instant case, the Board issued its merit review of the case on August 9, 1999. On May 20, 2002 appellant requested reconsideration. She, however, submitted no evidence or argument with her reconsideration request. The Board, therefore, finds that appellant failed to establish clear evidence of error and the Office did not abuse its discretion in denying a merit review of her claim.

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[2] 5 U.S.C. § 8128(a).

[3] The Office will deny a timely application for reconsideration without reopening a case for review on the merits if it fails to meet certain standards. The regulations state that the application for review and supporting documentation must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent evidence not previously considered by the Office; *see* 20 C.F.R. § 10.606(b) (1999).

[4] 20 C.F.R. § 10.607(a) (1999).

[5] *See Marilyn F. Wilson*, 51 ECAB 234 (1999); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[6] *See Howard Y. Miyashiro*, 51 ECAB 253 (1999); *Larry A. Lilton*, 44 ECAB 243 (1992).

The decision of the Office of Workers' Compensation Programs dated June 12, 2002 is hereby affirmed.

Dated, Washington, DC
February 27, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member