

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSE OWENS and DEPARTMENT OF THE ARMY,
DISTRICT ENGINEER, LOS ANGELES, Los Angeles, Calif.

*Docket No. 97-713; Submitted on the Record;
Issued January 21, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly found that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly determined that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

In this case, appellant filed a claim for traumatic injury alleging that on July 15, 1982, she injured herself when she slipped on a ladder in the course of her federal employment duties. The Office accepted appellant's claim for lower back and cervical strains and subsequently accepted that, as a result of the employment incident, appellant suffered a psychogenic overlay secondary to her spinal injury. Appellant did not return to duty but resigned due to her disability in 1983. In a decision dated August 14, 1992, the Office terminated appellant's entitlement to monetary compensation and medical benefits on the grounds that the medical evidence of record, represented by the reports of appellant's treating physician, established that appellant no longer had any continuing disability as a result of her July 1982 employment injury. In a decision dated January 8, 1993, the Office denied appellant's request for reconsideration of the Office's August 14, 1992 decision on the grounds that the evidence submitted in support of her request was irrelevant and immaterial regarding the issue of continuing disability. Appellant again requested reconsideration and submitted additional evidence in support of her claim. In a merit decision dated January 13, 1994, the Office reissued and modified as of that date the Office's August 13, 1992 decision to show that appellant had no continuing residuals as a result of her accepted work-related injuries. The decisions dated August 13, 1992 and January 8, 1993 were upheld. By letter dated January 2, 1995, appellant requested reconsideration of the prior decision and submitted additional evidence in support of her claim. In a merit decision dated April 4, 1995, the Office denied appellant's request for modification of the prior decision on the grounds that the weight of the medical evidence failed to establish that appellant had any

residuals of the July 1982 employment injury. The April 4, 1995 decision was accompanied by a complete recitation of appellant's appeal rights. In a letter to the Office dated April 3, 1996, appellant indicated that she was still unable to work due to pain and an emotional condition and submitted additional documentary and medical evidence. On August 26, 1996 appellant contacted the Office by telephone to inquire about the status of her claim. Appellant indicated that she had intended her April 3, 1996 letter to be a request for reconsideration. Appellant was instructed by the Office to submit her request for reconsideration in writing. By letter dated August 26, 1996, appellant requested reconsideration of the Office's April 4, 1995 decision and submitted additional documentary evidence in support of her request. By decision dated September 27, 1996, the Office found appellant's request for reconsideration untimely and further found that the evidence submitted did not establish clear evidence of error. In addition, the Office found that appellant's April 3, 1996 letter did not constitute a request for reconsideration as appellant simply indicated that she was still unable to work, but did not request reconsideration of the Office's prior decision and did not submit any medical evidence relevant to the issue in her claim.

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.¹ As appellant filed her appeal with the Board on December 2, 1996, the only decision properly before the Board is the Office's September 27, 1996 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).² 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.³ 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.⁴

As more than one year has elapsed since the date of issuance of the Office's April 4, 1995 merit decision and August 26, 1996, the date appellant requested review of her claim, the request for reconsideration is untimely.⁵ The evidence submitted by appellant does not raise a substantial question as to the correctness of the Office's last merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim. Appellant submitted a statement in which she indicated that she was still suffering from backaches and depression. She asserted that it was due to her depression and the fact that she had been in the hospital that she forgot to request reconsideration in her April 3, 1996 letter. In

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

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.138(b)(2); *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

⁴ *Connie Johns*, 44 ECAB 560 (1993).

⁵ 20 C.F.R. § 10.138(b)(2); *Gregory Griffin*, *supra* note 3.

support of her request, appellant submitted a document indicating that she had been admitted to Rancho Los Amigos Medical Center on March 27, 1996. Appellant did not submit any additional medical evidence. The document submitted by appellant establishes only that she was admitted to the hospital on March 27, 1996 and does not indicate the reason for her hospitalization. The record does contain, however, a discharge summary from Rancho Los Amigos Medical Center which indicates that appellant was admitted to the hospital on March 27, 1996 for a liver biopsy and was discharged on March 28, 1996. The documentary evidence submitted by appellant, therefore, does not support her contention that she was unable to timely request reconsideration due to her hospitalization and does not demonstrate that the Office committed an error in its April 4, 1995 decision in finding that appellant no longer suffers from any residuals of her July 1982 employment injury.

As appellant failed to submit clear evidence of error, the Office did not abuse its discretion in denying further review of the case.

The decision of the Office of Workers' Compensation Programs dated September 27, 1996 is affirmed.

Dated, Washington, D.C.
January 21, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member