

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BEVERLY O'NEIL and U.S. POSTAL SERVICE,  
POST OFFICE, Nashville, TN

*Docket No. 99-708; Oral Argument Held February 6, 2001;  
Issued March 1, 2001*

Appearances: *Beverly O'Neil, pro se; Miriam D. Ozur, Esq.*, for the Director,  
Office of Workers' Compensation Programs.

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On September 30, 1987 appellant, then a 33-year-old distribution clerk, twisted her lower back at work while lifting and pulling trays of books. The claim was accepted by the Office for lumbar strain, consequential psychogenic pain disorder and L5-S1 nerve root radiculopathy.<sup>1</sup> Appellant was placed on the periodic rolls and received compensation for the appropriate periods. She temporarily returned to limited duty on December 9, 1987 and later stopped work on December 16, 1987.

By decision dated March 19, 1997, the Office terminated appellant's monetary compensation effective March 30, 1997 on the basis that she had no continuing disability as a result of the accepted injury. Appellant subsequently requested a review of the written record and by decision dated October 5, 1997, an Office hearing representative affirmed the prior decision.

In a letter dated June 15, 1998, appellant requested reconsideration of the October 5, 1997 decision. The June 15, 1998 letter was date stamped as received by the Office on October 26, 1998. By decision dated November 18, 1998, the Office denied appellant's request for review on the basis that the evidence was insufficient to warrant review of the prior decision.

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<sup>1</sup> The Board notes that appellant has filed previous claims. The Office accepted an October 21, 1981 claim for a second lumbar strain. Appellant filed a later claim in September 1987 for a fracture of her left elbow; however, this claim was not accepted.

The Board finds that this case is not in posture for decision.

By decision dated October 5, 1997, an Office hearing representative affirmed the prior decision terminating appellant's entitlement to compensation benefits. Appellant requested reconsideration in a letter dated June 15, 1998, which the Office date stamped as received on October 26, 1998. The record does not contain the envelope in which the letter was sent, which would have the postmark. The Office did not issue a decision on the request for reconsideration until November 18, 1998, almost five months after the request was made. Although the Office considered appellant's June 15, 1998 request for reconsideration timely, it is responsible for the delay in the handling of the request. The delay effectively thwarted appellant's ability to file a timely appeal on the merits of this case to the Board.<sup>2</sup>

In the case of *Santiago Gonzalez*,<sup>3</sup> the Board held that delay by the Office before issuing its decision denying appellant's request for a hearing precluded appellant from appealing to the Board or seeking timely reconsideration of the last merit decision on his claim. The Board remanded the case for a *de novo* decision on the merits of the case in order to preserve appellant's appeal rights. The same rule is applicable here and the case will be remanded to the Office for issuance of a *de novo* decision in order to preserve appellant's appeal rights.

The decision of the Office of Workers' Compensation Programs dated November 18, 1998 is set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC  
March 1, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>2</sup> The merit decision in this case was issued on October 5, 1997 and appellant filed her appeal with the Board on December 29, 1998. As her appeal to the Board was not filed within one year of the October 5, 1997 merit decision, the Board lacks jurisdiction to review that decision. 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

<sup>3</sup> 43 ECAB 189 (1991).