

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**BRENDA K. WILLIAMS, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Rusk, TX, Employer**

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**Docket No. 04-90  
Issued: February 3, 2004**

*Appearances:*

*Edgar R. Jones, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On September 26, 2003 appellant filed a timely appeal from a nonmerit decision of the Office of Workers' Compensation Programs dated September 5, 2003 denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this issue.

**ISSUE**

The issue is whether the Office properly determined that appellant's request for reconsideration was untimely and failed to show clear evidence of error.

**FACTUAL HISTORY**

On November 17, 2000 appellant, then a 50-year-old distribution and window clerk, filed a claim for compensation alleging that she developed chronic depression and post-traumatic stress disorder causally related to the performance of her employment duties. Appellant stopped work on November 18, 2000 and has not returned.

In a decision dated January 9, 2003, the Office denied appellant's claim on the grounds that she failed to establish any compensable factors of employment and failed to provide

sufficient medical evidence to establish that she developed an emotional condition causally related to factors of her employment.

Appellant requested an oral hearing, which was held on September 27, 2001. Following the hearing appellant submitted additional medical and factual evidence in support of her claim. In a decision dated January 17, 2002, an Office hearing representative set aside the Office's prior decision on the grounds that appellant had established at least one compensable factor of employment. The Office hearing representative remanded the case to the Office for further medical development.

After a period of medical and factual development, by decision dated April 9, 2002, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she developed an emotional condition as a result of a compensable employment factor.

By letter dated April 9, 2003, stamped as received by the Office on April 16, 2003, appellant, through counsel, requested reconsideration and submitted additional factual and medical evidence. In a decision dated May 28, 2003, the Office determined that the request was untimely and failed to show clear evidence of error.

### **LEGAL PRECEDENT**

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.<sup>1</sup> As appellant filed her appeal on September 26, 2003, the only decision over which the Board has jurisdiction on this appeal is the May 28, 2003 decision denying her request for reconsideration.

With respect to whether a request for reconsideration is timely filed, section 10.607(a) of the regulations provides:

"An application for reconsideration must be sent within one year of the date of the [Office] decision for which review is sought. If submitted by mail, the application will be deemed timely if postmarked by the U.S. Postal Service within the time period allowed. If there is no such postmark, or it is not legible, other evidence such as (but not limited to) certified mail receipts, certificate of service, and affidavits, may be used to establish the mailing date."<sup>2</sup>

### **ANALYSIS**

In the present case, the envelope in which appellant mailed her request for reconsideration is not in the record and, therefore, the postmark date of the mailing cannot be determined. Absent the postmark date, other evidence may be used to establish the mailing date,

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<sup>1</sup> See 20 C.F.R. § 501.3(d).

<sup>2</sup> 20 C.F.R. § 10.607(a).

and therefore the timeliness, of the reconsideration request. As appellant's request for reconsideration is dated April 9, 2003, and as her request for reconsideration further contains a certificate of service, signed by counsel, stating that the request for reconsideration and supporting evidence were mailed to the Office, by regular mail, on April 9, 2003. The Board finds that it was filed within one year of the Office's April 9, 2002 decision, and is therefore timely. The Office's denial of appellant's reconsideration request as untimely was in error.

To require the Office to reopen a case for reconsideration, 20 C.F.R. § 10.606 provides, in relevant part, that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and setting forth arguments and presenting evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup> Section 10.608(a) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.<sup>4</sup>

In support of her April 9, 2003 request for reconsideration, appellant submitted new medical and documentary evidence, including, an April 7, 2003 report from Dr. Joann Ondrovik, a licensed psychologist. Because the Office erroneously applied the clear evidence of error test, it did not analyze the evidence appellant submitted pursuant to section 10.606(b). The case must therefore be remanded for the Office to review the evidence that appellant submitted and make the proper analysis pursuant to section 10.606(b). The Office shall then issue an appropriate decision.

### **CONCLUSION**

The Board finds that appellant's April 9, 2003 request for reconsideration was timely filed and that the case is not in posture for decision.

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<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> 20 C.F.R. § 10.608(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 28, 2003 is reversed regarding the untimely filing of the reconsideration request and remanded for further consideration consistent with this opinion.

Issued: February 3, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member