

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

DONNA M. CAMPBELL, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE, Little
Rock, AR, Employer**

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**Docket No. 03-2223
Issued: January 9, 2004**

Appearances:
Donna M. Campbell, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 11, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated June 11, 2003 which denied her request for reconsideration on the grounds that it was untimely filed and failed to establish clear evidence of error. Because more than one year has elapsed from the last merit decision dated March 12, 2002 to the filing of this appeal on September 11, 2003, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue on appeal is whether the Office properly denied appellant's request for reconsideration as untimely filed and lacking clear evidence of error.

FACTUAL HISTORY

On January 10, 1995 appellant, then a 42-year-old mark-up clerk, filed a notice of occupational disease alleging that beginning December 5, 1994 she experienced pain in her hands, wrists, arms, left elbow and left shoulder which she attributed to computer keyboard use.

The Office accepted the claim for mild overuse syndrome of both hands as a condition caused by factors of her federal employment. Appellant worked for intermittent periods in light-duty positions.

On November 29, 2001 appellant filed a recurrence of disability claim alleging that in October 2001 she had a recurrence of pain, numbness and tingling in her hands, wrists, arms, elbows, neck, shoulders and back attributed to the original work-related injury.¹

By decision dated March 12, 2002, the Office denied appellant's recurrence of disability claim on the basis that the evidence submitted was not sufficient to establish that she sustained a recurrence on or after October 20, 2001 that was related to her accepted condition of overuse syndrome.

In a letter dated March 10, 2003, appellant requested reconsideration and submitted additional evidence. The letter is stamped as received on March 12, 2003. There is a copy of the same request letter also contained in the record stamped twice as received on both March 12 and March 17, 2003.

By decision dated June 11, 2003, the Office denied appellant's request for reconsideration. The Office determined that appellant's March 10, 2003 letter requesting reconsideration was not received in the Office until March 17, 2003 and, therefore, was not dated within the one-year limit.²

¹ Appellant did not stop work at that time.

² The Board notes that, subsequent to the Office's decision, the Office received evidence concerning appellant's claim. The scope of the Board's review is limited to the evidence that was before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c). The Board, therefore, cannot review this evidence on appeal.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act³ vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”⁴

The Office's imposition of a one-year time limitation within which to file an application for review as part of the requirements for obtaining a merit review does not constitute an abuse of discretionary authority granted the Office under section 8128(a).⁵ This section does not mandate that the Office review a final decision simply upon request by a claimant.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a). Thus, section 10.607(a) of the implementing regulation provides that an application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁶

Section 10.607(b) states that the Office will consider an untimely application for reconsideration only if it demonstrates clear evidence of error by the Office in its most recent merit decision. The reconsideration request must establish that the Office's decision was, on its face, erroneous.⁷

ANALYSIS

The Office issued a decision on June 11, 2003, denying reconsideration of its prior March 12, 2002 decision on the grounds that appellant's request for reconsideration date stamped as received March 17, 2003 was untimely filed. The Office, in denying appellant's request for reconsideration, did not address the fact that the letter, which contained the March 17, 2003 date stamp, also contained a date stamp of March 12, 2003. Nevertheless, the record also contains a copy of the same request letter which was stamped only with a receipt date of March 12, 2003. The Board finds that March 12, 2003 is the date the Office received the reconsideration request. The one-year time limitation begins to run on the date following the date of the original Office

³ 5 U.S.C. §§ 8101-93.

⁴ 5 U.S.C. § 8128(a).

⁵ *Diane Matchem*, 48 ECAB 532, 533 (1997); citing *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

⁶ 20 C.F.R. § 10.607(a).

⁷ 20 C.F.R. § 10.607(b).

decision.⁸ A right to reconsideration within one year accompanies any subsequent merit decision on the issues.⁹ The Office overlooked the March 12, 2003 date stamp and erred in finding that the one-year time limitation had expired as appellant had from March 13, 2002 through March 12, 2003 in which to timely file a reconsideration request. The Board notes that, the Office's procedure manual, Chapter 2.1602.3(b)(1), provides that timeliness for a reconsideration request is determined not by the date the Office receives the request, but by the postmark on the envelope. The procedure manual states: "Timeliness is thus determined by the postmark on the envelope, if available. Otherwise, the date of the letter itself should be used." (Emphasis added.) The Board notes that the envelope containing the request was not retained in the record and the letter requesting reconsideration was dated March 10, 2003. For this reason the Board finds that the reconsideration request was timely. Appellant, timely filed her request for reconsideration within one year of the March 12, 2002 merit decision and the Office improperly denied her reconsideration request by applying the legal standard reserved for cases where reconsideration is requested after more than one year. Since the Office erroneously reviewed the evidence submitted in support of appellant's reconsideration request under the clear evidence of error standard, the Board will remand the case to the Office for review of this evidence under the proper standard of review for a timely reconsideration request.¹⁰

CONCLUSION

The Board finds that appellant's March 10, 2003 request for reconsideration was timely filed.

⁸ Federal (FECA) Procedure Manual, Part 2 -- *Claims, Reconsiderations*, Chapter 2.1602.3(a) (May 1991).

⁹ *Id.*; *Larry J. Lilton*, 44 ECAB 243 (1992).

¹⁰ The Board notes that appellant submitted additional evidence with her appeal to the Board. As stated previously, the Board cannot consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2003 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded to the Office for further proceedings consistent with this opinion.

Issued: January 9, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member