

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

CONNIE TROTTER, Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Coffeysville, OK Employer

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**Docket No. 04-2210
Issued: November 18, 2005**

Appearance:
William J. Pauzauskie, Esq., for the appellant
Miriam D. Ozur, Esq., for the Director

Oral Argument October 11, 2003

DECISION AND ORDER

Before:

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

JURISDICTION

On September 8, 2004 appellant filed a timely appeal of an August 27, 2004 decision of the Office of Workers' Compensation Programs which denied her request for reconsideration without conducting a merit review. Because more than one year has elapsed between the most recent merit decision dated March 11, 2003 and the filing of this appeal, the Board lacks jurisdiction to review the merits of her claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2). The only decision properly before the Board is the Office's August 27, 2004 decision, denying appellant's request for reconsideration of the merits of her claim.

ISSUE

The issue is whether the Office properly refused to reopen appellant's claim for reconsideration of the merits on the grounds that her request was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On January 8, 2003 appellant, then a 44-year-old rural carrier, filed a traumatic injury claim alleging that she sustained injuries to her head, neck and shoulder when she was struck

from behind in a motor vehicle accident in the performance of duty on that same date. She did not stop work.

In a February 25, 2003 report, Dr. Jerome Edward Block, Board-certified in internal medicine, noted that appellant was in a motor vehicle accident on January 8, 2003 when she was hit from behind while turning into a driveway. He checked the box “yes” in response to whether her condition was caused or aggravated by an employment activity and diagnosed “back pain r/o disc injury.” Dr. Block also noted that appellant was “on duty when the motor vehicle accident happened.”

By decision dated March 11, 2003, the Office denied the claim. The Office found that the evidence supported that the claimed event occurred. However, there was no medical evidence that provided a diagnosis which could be connected to the event. The Office noted that appellant’s physician diagnosed back pain; however, the Office explained that a diagnosis of pain was insufficient to establish that an injury occurred since pain was a symptom from which a diagnosis should be obtained.

By letter dated March 22, 2003 and received by the Office on March 27, 2003, appellant advised, “here is the medical evidence needed as to the injury sustained” on January 8, 2003. She explained that her back hurt such that she could not “walk or roll over in my bed.” Appellant indicated that it even hurt when she “breathed, coughed, laughed” or cried. She also indicated that she signed the papers and appellant wanted her lost wages and medical bills paid and if that was not possible, then she would obtain legal counsel. Appellant also related that she was going to see a neurosurgeon on March 24, 2003 and that she would send the results as soon as possible. Further, she requested that the Office get the” [i]nsurance company to pay me for my work that I missed already and all the medicals.”

Appellant’s additional medical evidence was comprised of a March 6, 2003 report, from Jack Bell, a physician’s assistant, who noted that since her injury on January 8, 2003 she had increasing trouble with lower back pain, including pain radiating down the legs and into her buttocks. He advised that a magnetic resonance imaging (MRI) scan showed a small central disc herniation at L5-S1 with possible disc bulge at L4-5.

By letter dated March 8, 2004, appellant advised the Office that she was pursuing a third-party claim and requested any evidence pertaining to her case. She also related that she believed that she was “misled” as no one accepted responsibility for her injuries and requested waiver of any time limits.

In an undated letter received by the Office on August 3, 2004, appellant advised that she had requested reconsideration in the previous year, but as of yet, had not received a response or any type of acknowledgement. She also related that she had asked for more time to submit additional medical evidence and had not received a response.

In an undated letter received by the Office on August 9, 2004,¹ appellant again indicated that she had not received a response to her reconsideration request of March 2003. She alleged that she had additional medical evidence which she tried to submit, but was advised that her

¹ A duplicate was also received on August 23, 2004.

claim was closed. Appellant requested an explanation and expansion of her claim and a waiver of all time limits.

By decision dated August 27, 2004, the Office denied appellant's request for reconsideration for the reason that it was not timely filed and failed to present clear evidence of error.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act 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.”

Office regulations, at 20 C.F.R. § 10.606, state that an employee seeking reconsideration should send the application for reconsideration to the address as instructed in the final decision and that the application must be submitted in writing and must set forth arguments and contain evidence that either shows that the Office erroneously applied or interpreted a specific point of law, advances a relevant legal argument not previously considered by the Office or constitutes relevant and pertinent new evidence not previously considered by the Office. A reconsideration request must be sent within one year of the date of the Office decision for which review is sought.²

With regard to the contents of a request for reconsideration, the Office's procedure manual states: “While no special form is required, the request must be in writing, identify the decision and the specific issue(s) for which reconsideration is being requested and be accompanied by relevant new evidence or argument not considered previously.”³

ANALYSIS

In its August 27, 2004 decision, the Office determined that appellant failed to file a timely application for review. The Office did not acknowledge her letter dated March 22, 2003 as a timely request for reconsideration, but rather, acknowledged her later letter dated August 3, 2004 as an untimely request for reconsideration from the Office's March 11, 2003 merit decision.

However, the Board finds that the March 22, 2003 letter is a valid and timely request for reconsideration. The Office rendered its most recent merit decision on March 11, 2003.

² 20 C.F.R. § 10.607(a).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.2a (June 2002).

Appellant's letter which was dated March 22, 2003 and was received by the Office on March 27, 2003 was, therefore, timely. Although the Office did not characterize the request as a reconsideration request, the Board finds that the letter and its contents were sufficient to constitute a valid request for reconsideration. As noted above, while no special form is required, "the request must be in writing, identify the decision and the specific issue(s) for which reconsideration is being requested and be accompanied by relevant new evidence or argument not considered previously."⁴ The Board has held that there is no requirement that the word "reconsideration" appear in a reconsideration request.⁵ In this case, the March 22, 2003 letter followed the Office's claim denial by 11 days. In denying the claim on March 11, 2003 the Office specifically found that the medical evidence was insufficient. In her March 22, 2003 letter, appellant provided her Office claim number, submitted additional evidence from her healthcare provider and advised that she was submitting the "medical evidence needed as to the injury." This was responsive to the reason listed by the Office, in its March 11, 2003 decision, for denying the claim. In this context, where her claim had recently been denied and appellant stated that she was submitting the "medical evidence needed as to the injury," the Board finds that her March 22, 2003 letter, received on March 27, 2003 constituted a timely request for reconsideration.

As the Office did not issue a decision on appellant's March 22, 2003 request for reconsideration until August 27, 2004, this delay of more than 90 days jeopardized her right to have the Board review the merits of the claim. In such situations, Office procedures contemplate that the Office should perform a merit review to protect the claimant's appeal rights.⁶ The case, therefore, will be remanded to the Office for issuance of an appropriate decision on the merits of appellant's claim.⁷

CONCLUSION

The Board finds that the Office improperly refused to reopen appellant's claim for reconsideration of the merits on the grounds that it was untimely filed and failed to show clear evidence of error.

⁴ *Id.*

⁵ See *Gladys Mercado*, 52 ECAB 255 (2001).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.9 (June 2002).

⁷ See *Debra E. Stoler*, 43 ECAB 561 (1992).

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Issued: November 18, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board