United States Department of Labor
Employees' Compensation Appeals Board

DEBRA McDAVID, Appellant	)	
and	)	**Docket No. 05-1637**
	)	**Issued: October 18, 2005**
DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION, Dallas, TX, Employer	)	

Appearances:
Michael C. Paul, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 2, 2005 appellant filed a timely appeal of a May 9, 2005 nonmerit decision of the Office of Workers' Compensation Programs that found that her request for reconsideration was not timely filed and did not present clear evidence of error. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction to review the merits of appellant's case.

ISSUE

The issue is whether appellant's request for reconsideration of the Office's March 19, 2004 decision was timely filed.

FACTUAL HISTORY

On April 10, 2003 appellant, then a 43-year-old safety engineer, filed a claim for compensation for an occupational disease of headaches that she attributed to using her computer. By decision dated June 2, 2003, the Office found that the evidence was insufficient to establish

the claimed events occurred as alleged, and that there was no medical evidence of a diagnosis that could be connected to the implicated factors.

Appellant requested a hearing, which was held on January 12, 2004, and submitted additional factual and medical evidence. By decision dated March 19, 2004, an Office hearing representative found that the events occurred as alleged, but the medical evidence was insufficient to establish that the claimed condition was related to the claimed employment factors.

By letter dated March 20, 2005, appellant's attorney requested reconsideration, contending that the Office did not properly develop the evidence. The Office marked this letter as received on March 21, 2005. By decision dated May 9, 2005, the Office found that appellant's March 20, 2005 request for reconsideration was not timely filed and did not 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."

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, 20 C.F.R. § 10.607(a) provides that "An application for reconsideration must be sent within one year of the date of the [Office] decision for which review is sought." The Board has found that the imposition of this one-year limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).[1]

In computing the time for requesting reconsideration, the date of the event from which the designated period of time begins to run shall not be included when computing the time period. However, the last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday.[2]

[1] *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[2] *Angel M. Lebron, Jr.*, 51 ECAB 488 (2000); *John B. Montoya*, 43 ECAB 1148 (1992).

ANALYSIS

The time for requesting reconsideration of the Office's March 19, 2004 decision began to run on March 20, 2004, and thus would have expired on March 19, 2005, had this date not been a Saturday. The next business day was Monday, March 21, 2005. As appellant's request for reconsideration was received on that date, it was timely. The case will thus be remanded to the Office for application of the standard for reviewing timely requests for reconsideration.[3]

CONCLUSION

The Board finds that appellant's March 20, 2005 request for reconsideration was timely filed.

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2005 decision of the Office of Workers' Compensation Programs is set aside with regard to whether appellant's March 20, 2005 request for reconsideration was timely filed. The case is remanded to the Office for application of the proper standard for reviewing a timely request for reconsideration.[4]

Issued: October 18, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[3] *See Donna M. Campbell*, 55 ECAB ___ (Docket No. 03-2223, issued January 9, 2004).

[4] This standard is found at 20 C.F.R. § 10.606(b)(2).