

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL YETO and U.S. POSTAL SERVICE,
POST OFFICE, Fallbrook, Calif.

*Docket No. 96-430; Submitted on the Record;
Issued August 14, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128 on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

This case has been before the Board on two prior occasions. By order dated December 26, 1991,¹ the Board granted a motion filed by the Director to remand the case for further development. In a decision dated January 12, 1993, the Office denied appellant's claim on the grounds that the weight of the medical evidence established that he had not sustained an emotional condition causally related to factors of employment. Following appeal, by decision dated February 8, 1995, the Board affirmed the Office decision.² The facts and background of the case contained in the prior Board decisions are incorporated herein by reference. On October 13, 1995 appellant requested reconsideration, and submitted additional evidence. By decision dated October 30, 1995, the Office denied appellant's request, finding that, pursuant to 20 C.F.R. § 10.138(b)(2), it had not been filed within one year of the January 12, 1993 decision and did not show clear evidence of error pursuant to 20 C.F.R. § 10.138(a). The Office found that it did not have jurisdiction to review Board decisions, and the matter at hand had been decided by the Board's February 8, 1995 decision. The Office further noted that the evidence submitted with appellant's request had previously been reviewed by the Office. The instant appeal follows.

The Board finds that appellant's October 13, 1995 request for reconsideration was timely filed.

¹ Docket No. 92-304. In a companion case issued on January 15, 1992, Docket No. 91-1336, the Board found that appellant did not sustain an emotional condition in the performance of duty on August 10, 1989.

² Docket No. 93-880.

Section 8128(a) of the Federal Employees' Compensation Act³ does not entitle a claimant to a review of an Office decision as a matter of right.⁴ This section, vesting the Office with discretionary authority to determine whether it will review an award for or against compensation, provides:

“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 its regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, the Office has stated that it will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.⁵ The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).⁶

The one-year time limitation begins to run on the date of the original Office decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues, including a decision of the Employees' Compensation Appeals Board.⁷ Appellant timely filed his request for reconsideration within one year of the Board's February 8, 1995 merit decision. The Office's denial of appellant's reconsideration request as untimely was therefore in error, but in this case constitutes harmless error.⁸

To require the Office to reopen a case for reconsideration, 20 C.F.R. § 10.138(b)(1) 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 the specific issues within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by: (1) showing that the Office erroneously applied or interpreted a point of law; (2) advancing a point of law or fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁹ Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least

³ 5 U.S.C. § 8128(a).

⁴ See *Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ *Jesus D. Sanchez*, *supra* note 4.

⁷ See *Larry J. Lilton*, 44 ECAB 243 (1992).

⁸ *Mohamed Yunis*, 46 ECAB 827 (1995).

⁹ 20 C.F.R. § 10.138(b)(1).

one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.¹⁰

In support of his October 13, 1995 request for reconsideration, appellant submitted a copy of an article from an employing establishment publication and a September 19, 1989 report from Melvin L. Schwartz, Ph.D. The Board has held that excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.¹¹ Dr. Schwartz' medical report had previously been reviewed by the Office in its January 12, 1993 decision. Consequently, the evidence submitted by appellant did not meet the requirements set forth at 20 C.F.R. § 10.138. As appellant did not demonstrate that the Office erroneously applied or interpreted a point of law, advance a point of law not previously considered by the Office or submit relevant new evidence, the Office did not abuse its discretion by declining to reopen appellant's claim for merit review.

The decision of the Office of Workers' Compensation Programs dated October 30, 1995 is hereby affirmed as modified.

Dated, Washington, D.C.
August 14, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹⁰ 20 C.F.R. § 10.138(b)(2).

¹¹ See *Dominic E. Coppo*, 44 ECAB 484 (1993).