

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of BRENDA L. ROCKINS and U.S. POSTAL SERVICE,
POST OFFICE, Little Rock, Ark.

*Docket No. 96-1475; Submitted on the Record;
Issued January 22, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly found that appellant's request for reconsideration was not timely filed.

The Board has duly reviewed the case record in the present appeal and finds that the Office erred in determining that appellant's request for reconsideration was not timely filed.

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).¹ The Office will not review a decision denying or terminating benefits unless the application for review is filed within one year of the date of that decision.² When an application for review is untimely, the Office takes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.³

The Office's last merit decision was issued on October 5, 1994. Appellant requested reconsideration of the decision on August 5, 1995. Apparently, the Office lost appellant's request, and appellant submitted a second request for reconsideration on January 3, 1996 with a return receipt indicating the Office received her first request on September 1, 1995. The "return receipt" appellant submitted, however, merely showed appellant's address on a postcard from the post office. By decision dated January 10, 1996, the Office denied appellant's claim. The Office indicated that it received appellant's January 3, 1996 reconsideration request on January 4, 1996, that the "return receipt" appellant submitted did not indicate the date the Office received her first reconsideration request, and appellant's request was untimely as it was filed more than a year

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.138(b)(2). *See also Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

³ *Thankamma Matthews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

after the Office's October 5, 1994 decision. The Office also found that additional evidence appellant submitted with her request did not establish clear evidence of error.

Subsequently, in an undated letter, appellant asserted that with the documents accompanying her first request for reconsideration she submitted a return receipt dated September 1, 1995 but the Office misplaced it. Appellant resubmitted the documents she submitted with her first request and they contained a copy of the return receipt dated September 1, 1995 which she referenced. Therefore, the record establishes that the Office received appellant's first reconsideration request on September 1, 1995. Since the record establishes that the Office received appellant's first reconsideration request on September 1, 1995, within a year of the last merit decision issued on October 5, 1994, appellant's request is timely, and the Office erred in denying her request.

Accordingly, the decision of the Office of Workers' Compensation Programs dated January 10, 1996 is reversed, and the case is remanded for further consideration.

Dated, Washington, D.C.
January 22, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member