

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ZAIDA ANDERSON and U.S. POSTAL SERVICE,  
MIAMI MANAGEMENT SECTION CENTER, Miami, Fla.

*Docket No. 96-2436; Submitted on the Record;  
Issued July 7, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for review of the merits on the grounds that it was untimely filed and failed to present clear evidence of error.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits on the grounds that it was untimely filed and failed to present clear evidence of error.

Appellant filed a claim on December 18, 1992 alleging that she sustained a back strain in the performance of duty. The Office accepted appellant's claim for back strain on February 1, 1993. Appellant filed a claim for compensation requesting wage-loss compensation intermittently from January through August 1993. The Office denied appellant's claim on January 28, 1994. Appellant requested reconsideration and by decision dated December 6, 1994, the Office denied modification of its January 28, 1994 decision. Appellant requested reconsideration on February 6, 1995 and the Office found that appellant had not submitted sufficient relevant new evidence to require merit review of her claim on June 19, 1995. Appellant requested reconsideration on January 24, 1996 and by decision dated February 8, 1996, the Office found that appellant's request was not timely filed and did not contain clear evidence of error.

The only decision before the Board on this appeal is that of the Office dated February 8, 1996 in which it declined to reopen appellant's case on the merits because the request was not timely filed, and did not show clear evidence of error. Since more than one year elapsed from the date of issuance of the Office's December 6, 1994 merit decision to the date of the filing of appellant's appeal, on August 1, 1996, the Board lacks jurisdiction to review that decision.<sup>1</sup>

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<sup>1</sup> See 20 C.F.R § 501.3(d).

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>2</sup> The Office 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.<sup>3</sup> When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.<sup>4</sup>

Since more than one year elapsed from the December 6, 1994 decision to appellant's January 24, 1996 application for review, the request for reconsideration is untimely. The evidence submitted by appellant does not raise a substantial question as to the correctness of the Office's last merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim. Appellant failed to submit any evidence not previously considered by the Office in reaching a final decision. Therefore, this evidence cannot establish error on the part of the Office. Furthermore, appellant's reconsideration did not contain any argument which would support her claim for error on the part of the Office.

The decision of the Office of Workers' Compensation Programs dated February 8, 1996 is hereby affirmed.

Dated, Washington, D.C.  
July 7, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.138(b)(2). *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

<sup>4</sup> *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).