

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMIE D. FREDA THOMAS and U.S. POSTAL SERVICE,
POST OFFICE, Farmington, Mich.

*Docket No. 96-1738; Submitted on the Record;
Issued May 12, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
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.

The Board has duly reviewed the case record and finds that the Office abused its discretion in finding that appellant's reconsideration request was untimely.

The procedural history in this case indicates that on May 4, 1993 appellant, then a 31-year-old distribution clerk, filed a claim alleging that on the morning of May 1, 1993¹ she injured her right chest, shoulder and neck while breaking down letter trays. She stopped work on May 4, 1993. By decision dated August 25, 1993, the Office denied the claim on the grounds that fact of injury had not been established. Following appellant's request, a hearing was held on September 6, 1994. In a November 3, 1994 decision, an Office hearing representative found that the May 1, 1993 incident occurred as alleged but that the medical evidence did not establish that appellant was disabled therefrom. In a letter dated October 31, 1995, that was received by the Office on November 2, 1995, Ms. Jeanne Vallez Barron, an attorney, requested reconsideration and submitted additional evidence. The letterhead provided a street address of 24460 Telegraph Road, Southfield, Michigan, 48034-3018 and indicated that the mailing address was P.O. Box 260, Southfield, Michigan, 48037-0260. By letter dated November 2, 1995, that was mailed to the Telegraph Road address, the Office informed Ms. Barron that an authorization signed by appellant was needed before the Office could address the reconsideration request. On January 31, 1996 an authorization, that was signed by appellant that day, was faxed to the Office. By decision dated February 21, 1996, 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 November 3,

¹ The date of injury was initially identified as April 30, 1993. Appellant subsequently indicated that it occurred after midnight on May 1, 1993.

1994 decision and did not show clear evidence of error pursuant to 20 C.F.R. § 10.138(a). The instant appeal follows.

The only decision before the Board is the Office's February 21, 1996 decision denying appellant's request for reconsideration of the November 4, 1994 decision of the Office hearing representative. Because more than one year had elapsed between the issuance of this decision and May 15, 1996, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the November 3, 1994 Office decision.²

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).³ 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.⁴ 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.⁵

On appeal appellant, through counsel, contends: (1) that appellant's request for reconsideration was timely filed as it was received by the Office on November 2, 1995; (2) that Office regulations do not require that the Office cannot act without a signed authorization; (3) that counsel did not receive the November 2, 1995 letter from the Office; and (4) that medical evidence submitted with appellant's request demonstrated clear evidence of error.

Regarding Ms. Barron's contention that she did not receive the November 2, 1995 Office letter informing counsel that a signed authorization was required, the copy in the case records shows that, while it was mailed to a street address indicated on Ms. Barron's letterhead, the letterhead clearly indicated that her mailing address was P.O. Box 260, Southfield, Michigan. The Board therefore finds that, as the November 2, 1995 Office letter was not sent to the proper mailing address, it was an abuse of discretion by the Office to find appellant's request untimely. There is no indication in the record that Ms. Barron was not authorized to represent appellant on October 31, 1995, and the Office subsequently accepted the January 31, 1996 authorization as a valid reconsideration request. Accordingly, the Board finds that the October 31, 1995 letter constitutes a valid request for reconsideration filed within one year of the November 3, 1994 decision of the Office hearing representative. Thus, as the reconsideration was timely filed, the Office must assess the reconsideration request under the appropriate standards.⁶ The case will therefore be remanded to the Office for proper consideration of appellant's timely request for reconsideration. After such further development as it deems necessary, the Office shall issue an appropriate *de novo* decision.

² See 20 C.F.R. § 501.3(d)(2).

³ 5 U.S.C. § 8128(a).

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

⁵ *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁶ 5 U.S.C. § 8128(a).

The decision of the Office of Workers' Compensation Programs dated February 21, 1996 is hereby reversed and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
May 12, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member