

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBIN F. BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, Ga.

*Docket No. 96-2367; Submitted on the Record;
Issued October 16, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

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 did not abuse its discretion in failing to reopen appellant's case for merit review.

The facts in this case indicate that on September 23, 1991 appellant sustained an employment-related lumbar strain. She stopped work that day, received appropriate continuation of pay and compensation, and returned to regular duty on February 11, 1993 when she worked 2.5 hours. Appellant submitted a recurrence claim dated December 28, 1993, stating that she could not work due to persistent back pain. By decision dated April 14, 1994, the Office denied the claim, finding that appellant failed to establish a causal relationship between her current condition and the September 23, 1991 employment injury.

On April 30, 1994 appellant requested a hearing. By letter dated October 20, 1994, the Office notified appellant that a hearing would be held on November 17, 1994. In a November 28, 1994 decision, an Office hearing representative found that, as appellant did not appear for the hearing and had not shown good cause for such failure to appear, she had abandoned her request for a hearing. By letter dated December 29, 1994, appellant, through counsel, advised that she had not received notification of the scheduled hearing. In a January 10, 1995 decision, an Office hearing representative found that the notice of hearing dated October 20, 1994 was sent to appellant's address of record and had not been returned by the post office and was therefore presumed to have been received. Appellant, thus, failed to provide persuasive evidence that a hearing should be rescheduled.

In a letter dated July 14, 1995, that was submitted to the Office on April 16, 1996 by her Congressman, the Honorable John Lewis, appellant requested reconsideration with the Office.¹ By decision dated June 24, 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 April 14, 1994 decision and did not show clear evidence of error pursuant to 20 C.F.R. § 10.138(a). The Office further found that the evidence did not contain objective medical evidence consistent with appellant's subjective complaints of pain. The instant appeal follows.

The only decision before the Board is the Office's June 27, 1996 decision denying appellant's request for reconsideration of the April 14, 1994 decision. Because more than one year had elapsed between the issuance of this decision and July 25, 1996, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the April 14, 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

The Board finds that as more than one year had elapsed from the date of issuance of the Office's April 14, 1994 merit decision and appellant's request for reconsideration dated July 14, 1995, her request for reconsideration was untimely. The Board further finds that the arguments made by appellant in support of this request do not raise a substantial question as to the correctness of the Office's April 14, 1994 merit decision. She submitted no additional medical evidence in support of her claim. Therefore, as she has not, by the submission of factual and medical evidence, raised a substantial question as to the correctness of the Office's April 14, 1994 decision, she has failed to establish clear evidence of error, and the Office did not abuse its discretion in denying a merit review of her claim.

¹ In her reconsideration request, appellant stated that she had enclosed medical evidence. In her letter to Congressman Lewis, she stated she had enclosed a functional capacity evaluation. The record, however, contains no medical evidence submitted subsequent to the April 14, 1994 merit 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).

The decision of the Office of Workers' Compensation Programs dated June 27, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 16, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member