

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ETHEL WALKER-ANDERSON and U.S. POSTAL SERVICE,  
POST OFFICE, Miami, FL

*Docket No. 99-1284; Submitted on the Record;  
Issued March 15, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

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

The Office accepted that appellant's August 3, 1984 employment injury resulted in a mild chronic low back strain and paid compensation for intermittent absences from work and for medical treatment. By decision dated May 13, 1996, the Office found that the evidence failed to demonstrate that appellant's current condition or disability was causally related to her August 3, 1984 employment injury. By letter dated June 3, 1996, appellant requested reconsideration and submitted additional evidence. By decision dated November 25, 1996, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision.

By letter dated November 24, 1998, appellant, through her authorized union representative, requested reconsideration, stating that a letter requesting reconsideration dated November 24, 1997 had been sent to the Office and no response had been received. Accompanying the November 24, 1998 letter was a medical report from Dr. John E. Vinsant, Jr., an orthopedic surgeon, and a copy of a letter dated November 24, 1997 in which reconsideration of the Office's November 25, 1996 decision is requested.

By decision dated December 23, 1998, the Office found that appellant's request for reconsideration was not timely filed within the one-year limit set forth by 20 C.F.R. § 10.138(b)(2) and that it did not present clear evidence of error. The Office stated that it appeared that it did not receive the November 24, 1997 request for reconsideration, but that it had reviewed this letter and noted that no new evidence was submitted with this request for reconsideration. The Office stated: "Evidence in support of reconsideration requests must accompany such requests. It is for these reasons that your request for reconsideration must be denied."

The only Office decision before the Board on this appeal is the Office's December 23, 1998 decision, denying appellant's request for reconsideration on the basis that it was not filed with the one-year time limit set forth in 20 C.F.R. § 10.138(b)(2) and that it did not present clear evidence of error. Since more than one year elapsed between the date of the Office's most recent merit decision on November 25, 1996 and the filing of appellant's appeal on March 23, 1999, the Board lacks jurisdiction to review the merits of appellant's claim.<sup>1</sup>

Section 8128(a) of the Federal Employees' Compensation Act, vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"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 regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, 20 C.F.R. § 10.138(b)(2) provides that "the Office will not review ... a decision denying or terminating a benefit unless the application is filed within one year of the date of that decision." The Board has found that the imposition of this one-year limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).<sup>2</sup>

The Board finds that appellant's request for reconsideration was timely filed.

While the original of appellant's representative's November 24, 1997 request for reconsideration does not appear in the case record, the copy submitted with the November 24, 1998 letter reflects a proper address and mailing in the ordinary course of business.

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<sup>1</sup> 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board is filed within one year of the date of the Office's final decision being appealed.

<sup>2</sup> *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

The copy of the November 24, 1997 letter is on the letterhead of a business organization, the National Association of Letter Carriers, that has a mailing custom or practice. Through the application of the “mailbox rule,” this creates a presumption that the Office received the November 24, 1997 request for reconsideration.<sup>3</sup> Corroborating the existence and mailing of the November 24, 1997 request for reconsideration are medical reports dated January 10, February 24 and October 24, 1997, all of which are date-stamped as received by the Office on November 25, 1997. The November 24, 1997 letter requesting reconsideration refers to “new medical evidence” that it requests the Office to consider and indicates that it is accompanied by “enclosures.”

The Board finds that the evidence and the “mailbox” rule establish that appellant submitted a timely request for reconsideration of the Office’s November 25, 1996 decision. The case will be remanded to the Office to properly address this timely request for reconsideration and to issue an appropriate decision.

The decision of the Office of Workers’ Compensation Programs dated December 23, 1998 is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC  
March 15, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>3</sup> *Bonnye Matthews*, 45 ECAB 657 (1994); *Larry L. Hill*, 42 ECAB 596 (1991).