

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of NATHALIE M. CHAISSON and U.S. POSTAL SERVICE,  
POST OFFICE, Coppell, TX

*Docket No. 03-2262; Submitted on the Record;  
Issued December 31, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

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

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

The Office accepted appellant's claim for a cervical strain and authorized surgery for a cervical discectomy and fusion of C3-4, C4-5 and C5-6. By decision dated May 23, 2002, the Office terminated appellant's compensation because she refused an offer of suitable employment and the penalty provisions of 5 U.S.C. § 8106(c)(2) was applicable. By letter dated June 5, 2002, appellant requested reconsideration of the Office's decision. By decision dated August 5, 2002, the Office reviewed appellant's case on the merits and denied appellant's request for modification.<sup>1</sup>

On May 8, 2003 appellant filed a claim for a schedule award. By letter dated June 4, 2003, the Office informed appellant that no further action could be taken to process her claim for a schedule award due to the Office's prior decisions. The Office stated that appellant could exercise her appeal rights attached to the August 5, 2002 decision.

By letter dated June 22, 2003, with a date received by the Office on June 27, 2003, appellant requested reconsideration of the Office's decision. The exact same letter dated June 22, 2003 with the words "2<sup>nd</sup> REQUEST" handwritten on it was faxed to the Office on August 28, 2003.

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<sup>1</sup> On April 30, 2003 the Office of Personnel Management approved appellant's claim for disability retirement.

By decision dated September 10, 2003, the Office stated that appellant's letter requesting reconsideration was received in the Office on August 28, 2003 and, therefore, it was filed more than a year after the Office's August 5, 2002 decision and was untimely. The Office also stated that appellant did not establish clear evidence of error in the Office's prior decisions.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>2</sup> As appellant filed the appeal with the Board on September 23, 2003, the only decision before the Board is the Office's September 10, 2003 decision, denying appellant's request for reconsideration.

The Office, through its regulation, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>3</sup> 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.<sup>4</sup> The Office will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error by the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.<sup>5</sup>

20 C.F.R. § 10.607 states that the application for reconsideration: "will be deemed timely if postmarked by the U.S. Postal Service within the time period allowed. If there is no such postmark, or it is not legible, other evidence such as (but not limited to) certified mail receipts, certificate of service, and affidavits, may be used to establish the mailing date."

In this case, the postmarked envelope in which appellant mailed her letter requesting reconsideration is not in the record. The Office stated that it received appellant's June 22, 2003 reconsideration request on August 28, 2003. The record indicates that a copy of the June 22, 2003 reconsideration request was faxed to the Office on August 28, 2003. However, the date of receipt on appellant's original June 22, 2003 reconsideration request was marked as received by the Office, on June 27, 2003, within a year of the Office's August 5, 2002 decision. Therefore appellant's reconsideration request is timely.<sup>6</sup> The burden is on the Office to show that a reconsideration request was untimely and the Office has failed to meet this burden.

Since appellant's June 22, 2003 reconsideration request was timely filed, the case will be remanded for the Office to adjudicate appellant's reconsideration request criteria set forth in

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<sup>2</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.607(a); *see also Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

<sup>5</sup> 20 C.F.R. § 10.607(b); *see Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>6</sup> *See Algimantas Bumelis*, 48 ECAB 679, 680 (1997).

20 C.F.R. § 10.606.<sup>7</sup> After any further development as it deems necessary, the Office shall issue an appropriate decision.

The September 10, 2003 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further action consistent with this decision.

Dated, Washington, DC  
December 31, 2003

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>7</sup> Appellant submitted various medical reports and other documents after the Office issued its last merit decision on August 5, 2002.