

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID R. STARK and U.S. POSTAL SERVICE,
POST OFFICE, McLean, VA

*Docket No. 03-1183; Submitted on the Record;
Issued July 7, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On November 20, 2001 appellant, a 53-year-old letter carrier, filed a traumatic injury claim alleging that he injured his back on November 19, 2001 while lifting and bending. The employing establishment controverted the claim on the basis that appellant failed to identify factors of employment.

In a letter dated December 4, 2001, the Office advised appellant as to the type of information required to support his claim.

By decision dated January 11, 2002, the Office denied appellant's claim on the basis that he failed to establish fact of injury.

By letter dated January 10, 2003, appellant requested reconsideration of the decision denying his claim and noted that he would be submitting evidence under a separate letter. Appellant, in a letter dated January 28, 2003, submitted medical evidence in support of his reconsideration request.

By nonmerit decision dated March 25, 2003, the Office denied appellant's claim on the basis that it was untimely filed and failed to establish clear evidence of error.

The Board finds that the Office improperly found that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

Section 8128(a) of the Federal Employees' Compensation Act¹ does not entitle a claimant to a review of an Office decision as a matter of right.² This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.³ The Office, through regulations, has imposed limitations on the exercise of its discretionary authority. One such limitation is that 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 The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).⁵

The Office issued its last merit decision on January 11, 2002. Appellant requested reconsideration in a letter dated January 10, 2003. The Office, in its procedures, has indicated that, in determining whether a request for reconsideration is timely filed, the postmark date on the envelope of the request will be used to judge timeliness. If the envelope is not contained in the case record, the date of the letter will be used.⁶ In the present case, the record submitted on appeal does not contain an envelope with a postmark. The letter requesting reconsideration, however, is dated January 10, 2003, within one year after the Office's last merit decision. Appellant's request for reconsideration therefore was timely filed within the procedures of the Office. The decision of the Office will be set aside and the case returned to the Office for reconsideration based upon the proper standard to be applied in this case.

¹ 5 U.S.C. § 8128(a)

² *Thankamma Mathews*, 44 ECAB 765 (1993).

³ *Id.* at 768; *see also Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁴ 20 C.F.R. § 10.607(a). The Board has concurred in the Office's limitation of its discretionary authority; *see Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

⁵ *George C. Vernon*, 54 ECAB ____ (Docket No. 02-1954, issued January 6, 2003); *Thankamma Mathews*, *supra* note 2 at 769; *Jesus D. Sanchez*, *supra* note 3 at 967.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(a) (May 1996).

The March 25, 2003 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
July 7, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member