

**United States Department of Labor
Employees' Compensation Appeals Board**

EVA H. BROWN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baton Rouge, LA, Employer**

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**Docket No. 04-131
Issued: April 15, 2004**

Appearances:
Eva H. Brown, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On October 21, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated August 1, 2003, which denied appellant's request for reconsideration without reviewing the case on the merits. Because more than one year has elapsed between the last merit decision dated February 20, 2002 and the filing of this appeal on October 21, 2003, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration without reviewing the merits of her case.

FACTUAL HISTORY

On November 18, 1993 appellant, then a 36-year-old maintenance control clerk, filed an occupational disease claim alleging that she sustained tendinitis and carpal tunnel syndrome as a result of her federal employment. The Office accepted appellant's claim for bilateral carpal

tunnel syndrome, bilateral wrist tenosynovitis and bilateral rotator cuff tears and appellant was paid compensation.

On December 20, 2000 appellant was offered a job by the employing establishment as a modified maintenance operations support clerk. In response, on February 5, 2001 appellant submitted a January 25, 2001 report by Dr. Andrew T. Kucharchuk, her treating Board-certified orthopedic surgeon, wherein he indicated that appellant had a 20 percent impairment of the wrists and a 20 percent impairment of the shoulders. In an opinion dated February 1, 2001, Dr. Kucharchuk opined that appellant “should stay retired because her condition does not qualify her for the modified job assignment.” By letter dated February 7, 2001, the Office informed appellant that this position was found to be suitable and that she had 30 days to accept the position or provide an explanation of reasons for refusing it. Appellant refused the offer and on March 13, 2001 the Office gave her an additional 15 days to accept the job. On March 30, 2001 the Office terminated appellant’s compensation effective March 29, 2001, because she neglected to work after suitable work had been offered to her.

Appellant disagreed with this decision and requested an oral hearing. After the hearing held on November 7, 2001, the hearing representative issued a decision, dated February 20, 2002, wherein he affirmed the Office’s March 30, 2001 decision. By letter dated June 9, 2002, appellant requested reconsideration. In a letter to appellant’s representative dated July 31, 2003, the Office admitted that appellant’s request for reconsideration was received by the Office on July 1, 2002 but, due to administrative oversight, was not processed.

On August 1, 2003 the Office issued a decision denying appellant’s request for reconsideration without reviewing the merits of her case. The Office noted that appellant had neither raised substantive legal questions nor included any new relevant evidence.

LEGAL PRECEDENT

The Office Procedure Manual states:

“When a reconsideration decision is delayed beyond 90 days and the delay jeopardizes [appellant’s] right to review of the merits of the case by the Board, the [Office] should conduct a merit review. That is, the basis of the original decision and any new evidence should be considered and, if there is no basis to change the original decision, an order denying modification (rather than denying the application for review) should be prepared....”¹

ANALYSIS

In the present case, following the Office’s February 20, 2002 decision, appellant timely requested reconsideration on or about July 1, 2002. However, this request for reconsideration appears to have been misplaced, as the Office conceded. The Office did not issue its decision denying appellant’s request for review until August 1, 2003, over one year after both the February 20, 2002 decision and the July 1, 2002 request for reconsideration. This delay

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.9 (June 2002).

effectively precluded appellant from seeking further merit review by the Office or a Board review of the merits of that decision.² The Board, therefore, finds that the Office abused its discretion in denying appellant's request for reconsideration without conducting a review on the merits.

CONCLUSION

Under the circumstances described above, the Board finds that the Office abused its discretion in denying appellant a review on the merits and this case is remanded. On remand, the Office will reopen appellant's case for a merit review under section 8128(a) of the Federal Employees' Compensation Act³ which will include any evidence submitted in conjunction with appellant's previous requests for reconsideration and all other evidence obtained by the Office in the interim. After such further development as it may deem necessary, the Office will then issue a merit reconsideration decision that will enable appellant to seek the Board review of the merits of her claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 1, 2003 is vacated and the case is remanded for further consideration consistent with this opinion.

Issued: April 15, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

² See *Anthony A. Degenaro*, 44 ECAB 230, 238 (1992).

³ 5 U.S.C. § 8128(a).