

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

TRELLE W. THOMAS, Appellant

and

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

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**Docket No. 05-876
Issued: July 19, 2005**

Appearances:
Trelle W. Thomas, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 7, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated November 9, 2004, denying her reconsideration request on the grounds that it was untimely and failed to show clear evidence of error and an April 4, 2004 decision denying her request for a hearing. 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.¹ As the appeal was filed on March 7, 2005, the Board has no jurisdiction to consider the Office's October 8, 2003 merit decision denying her claim. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the November 9, 2004 decision.

ISSUES

The issues are: (1) whether the Office properly refused to reopen appellant's claim for reconsideration of the merits on the grounds that it was untimely filed and failed to show clear evidence of error; and (2) whether the Office properly denied appellant's request for a hearing.

¹ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

FACTUAL HISTORY

On August 1, 2003 appellant, then a 28-year-old city mail carrier, filed a compensation claim alleging that she sustained a cervical strain on June 13, 2003 causally related to factors of her federal employment.

Appellant submitted copies of medical restrictions in reports dated July 17 and September 1, 2003, from Drs. Stephen N. Wilson and Michelle Cosse. These reports did not contain a diagnosis of her condition or an opinion on causal relationship.

By letter dated September 4, 2003, the Office advised appellant that she needed to submit additional evidence, including a medical report containing a diagnosis and an explanation as to how her condition was causally related to her employment.

By decision dated October 8, 2003, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained a medical condition causally related to factors of her employment.

In a letter received by the Office on October 20, 2003 appellant provided a description of her work duties and stated that in June 2003 her left arm became swollen and painful due to carrying mail. She submitted a September 30, 2003 medical report in which Dr. Cosse stated that appellant had a one-year history of intermittent left shoulder pain and swelling, which was aggravated by walking a mail route and carrying a large satchel. She indicated that the physical requirements of appellant's job kept her trapezius and supraspinatus muscles chronically inflamed.

By letter postmarked February 27, 2004, appellant requested an oral hearing.

By decision dated April 4, 2004, the Office denied appellant's request for a hearing on the grounds that it was not timely filed within 30 days of the October 8, 2003 decision and the issue could be addressed equally well through a reconsideration request and the submission of additional evidence.

In an undated letter stamped by the Office as received on June 8, 2004² appellant stated:

"I am writing with respect to the workers' compensation claim [referenced] above."³

"I was instructed to submit evidence, which provides a history, diagnosis and physician opinion relating to my current medical condition. If there are any questions please contact me...."

² The envelope containing the request was not retained in the record.

³ Appellant included the Office file number for her claim, 162061645.

Appellant submitted a copy of Dr. Cosse's September 30, 2004 report.

By letter dated October 21, 2004, appellant requested reconsideration of her claim in Office file number 162061645.

By decision dated November 9, 2004, the Office denied appellant's request for reconsideration on the grounds that it was untimely and failed to show clear evidence of error in the October 8, 2003 decision.

LEGAL PRECEDENT -- ISSUE 1

Section 8128(a) of the Federal Employees' Compensation Act⁴ does not entitle a claimant to a review of an Office decision as a matter of right.⁵ This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.⁶ The Office, through its 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 request for reconsideration is filed within one year of the date of that decision.⁷ 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).⁸

Section 10.607(b) states that the Office will consider an untimely application for reconsideration only if it demonstrates clear evidence of error by the Office in its most recent merit decision. The reconsideration request must establish that the Office's decision was, on its face, erroneous.⁹

ANALYSIS -- ISSUE 1

In *Vicente P. Taimanglo*,¹⁰ and *Gladys Mercado*¹¹ the Board found that letters written by the employees constituted timely requests for reconsideration even though they did not mention the word "reconsideration." In *Taimanglo*, the Board stated that "[w]hile no special form is required, the request must be made in writing, identify the decision and the specific issue(s), for

⁴ 5 U.S.C. § 8128(a).

⁵ *Thankamma Mathews*, 44 ECAB 765 (1993).

⁶ *Id.* at 768.

⁷ 20 C.F.R. § 10.607; *see also Alberta Dukes*, 56 ECAB ____ (Docket No. 04-2028, issued January 11, 2005).

⁸ *Thankamma Mathews*, *supra* note 5 at 769.

⁹ 20 C.F.R. § 10.607(b); *see also Donna M. Campbell*, 55 ECAB ____ (Docket No. 03-2223, issued January 9, 2004).

¹⁰ *Vicente P. Taimanglo*, 45 ECAB 504 (1994).

¹¹ *Gladys Mercado*, 52 ECAB 255 (2001).

which reconsideration is being requested and be accompanied by relevant and pertinent new evidence or argument not considered previously.”¹² In *Taimanglo*, the claimant had identified the Office decision in his letter, indicated that additional medical evidence had been submitted and stated that he was waiting for a response. The Board found that the letter constituted a timely request for reconsideration. In *Mercado*, the claimant asked the Office to help her reopen her case, provided her case number and submitted additional medical evidence. The Board found that the claimant’s letter constituted a timely request for reconsideration.

In this case, appellant submitted a letter stamped by the Office as received on June 8, 2004. In her letter she stated that she was writing about her compensation case and she included the Office file number for her case. Appellant indicated that she was responding to the Office’s request for additional medical evidence and she submitted a medical report from Dr. Cosse that had not previously been considered by the Office.¹³ Considering these factors, the Board finds that appellant’s June 8, 2004 letter constituted a request for reconsideration based on the new medical evidence submitted.¹⁴ Since the date of the Office’s final decision was October 8, 2003 and appellant’s letter was received by the Office on June 8, 2004, her request for reconsideration was timely. The Office improperly denied her reconsideration request by applying the legal standard reserved for cases where reconsideration is requested after more than one year. The Board will remand the case for review of the new medical evidence under the proper standard of review for a timely reconsideration request.

LEGAL PRECEDENT -- ISSUE 2

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing, or, in lieu thereof, a review of the written record.¹⁵ A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision, for which the hearing is sought.¹⁶ A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which the hearing is sought.¹⁷ The Office has discretion, however, to grant or deny a request

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.2 (January 2004); *Vicente P. Taimanglo*, *supra* note 10.

¹³ The Board notes that Dr. Cosse’s September 30, 2004 report had been submitted prior to the Office’s April 4, 2004 decision but was not reviewed because the April 4, 2004 decision was a nonmerit denial of her untimely request for a hearing.

¹⁴ *See Gladys Mercado*, *supra* note 11.

¹⁵ 5 U.S.C. § 8124(b) of the Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary of Labor is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary of Labor. Section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing; a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days. *See Charles J. Prudencio*, 41 ECAB 499 (1990).

¹⁶ 20 C.F.R. § 10.616(a).

¹⁷ *James Smith*, 53 ECAB 188 (2001).

that is made after this 30-day period.¹⁸ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.¹⁹

ANALYSIS -- ISSUE 2

Appellant's request for a hearing was postmarked February 27, 2004, more than 30 days after the Office's October 8, 2003 decision. Therefore, appellant was not entitled to a hearing as a matter of right. The Office exercised its discretion and determined that the issue in the case, causal relationship, could be resolved through a request for reconsideration and the submission of additional evidence. The Board finds that the Office did not abuse its discretion in denying appellant's untimely request for a hearing in its April 4, 2004 decision.

CONCLUSION

The Board finds that appellant's June 8, 2004 request for reconsideration was timely filed within one year of the October 8, 2003 decision. The Office improperly denied her reconsideration request by applying the legal standard reserved for cases where reconsideration is requested after more than one year. The Board will remand the case for review of this evidence under the proper standard of review for a timely reconsideration request.²⁰ The Board further finds that the Office, in its April 4, 2004 decision, did not abuse its discretion in denying appellant's untimely request for a hearing.

¹⁸ 20 C.F.R. § 10.616(b).

¹⁹ *James Smith*, *supra* note 17.

²⁰ *See Donna M. Campbell*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 9, 2004 is remanded for further action consistent with this decision of the Board. The April 4, 2004 decision is affirmed.

Issued: July 19, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board