

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL ADLONG PIGOTT and U.S. POSTAL SERVICE,
POST OFFICE, Houston, Tex.

*Docket No. 96-1074; Submitted on the Record;
Issued April 2, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

The Office accepted appellant's claim for a stretch injury to the right brachial plexis and appropriate medical and compensation benefits were paid. By decision dated March 10, 1992, the Office terminated benefits, stating that the evidence of record established that appellant was no longer disabled due to the July 30, 1984 employment injury. Appellant's subsequent reconsideration requests were denied on April 1 and November 17, 1993 and May 6, 1994. By letter dated October 31, 1995, appellant requested reconsideration of the Office's decision. Appellant alleged that she had previously sent the Office a request for reconsideration in March, presumably March 1995. To support her claim, appellant submitted an undated letter requesting reconsideration and a medical report from Dr. John M. Sanchez, a Board-certified family practitioner, dated November 14, 1994. By decision dated January 11, 1996, the Office denied appellant's reconsideration request as untimely and found that the evidence submitted presented no clear evidence of error on the part of the Office.

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).¹ 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.² When an application for review is untimely, the Office takes a limited review to

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.138(b)(2). *See also Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41

determine whether the application presents clear evidence that the Office's final merit decision was in error.³ The timeliness of the application for review is determined by the postmark on the envelop, if available. Otherwise, the date of the letter itself is used.⁴ If there is no date on the letter, the mailbox rule which raises the presumption that the Office received the letter might be applicable if the copy of the letter shows a proper address and there is evidence showing the letter was mailed in the ordinary course of business.⁵

The Board finds that, since more than one year has elapsed since from the date of issuance of the Office's May 6, 1994 merit decision to the date that appellant's request for reconsideration was filed, October 31, 1995, appellant's request for reconsideration is untimely. The Board further finds that the evidence submitted by appellant in support of such request does not raise a substantial question as to the correctness of the Office's May 6, 1994, merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim. Appellant submitted no evidence to show that she actually mailed a request for reconsideration in March 1995 as there is no envelope showing the date it was mailed and no return receipt. Further, Dr. Sanchez's November 14, 1994 report in which he stated that appellant's symptomatology of a bulging disc at C5-6 was related to appellant's July 30, 1984 employment injury does not address whether appellant continued to be disabled from that injury or provide a rationale for appellant's ongoing symptoms.⁶ Dr. Sanchez's opinion therefore does not demonstrate any clear evidence of error by the Office in terminating appellant's benefits.

As appellant has not, by the submission of medical evidence, raised a substantial question as to the correctness of the Office's May 6, 1994 decision, she has failed to establish clear evidence of error and the Office did not abuse its discretion in denying a merit review of her claim.

ECAB 458 (1990).

³ *Thankamma Matthews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁴ *Gloria J. Catchings*, 43 ECAB 242, 244 (1991).

⁵ *See Bonnye Matthews*, 45 ECAB 657, 667 (1994). Provided that the conditions which give rise to the presumption remain the same, namely evidence of a properly addressed letter together with evidence of proper mailing, the mailbox rule may be used to establish receipt by the Office." *Larry L. Hill*, 42 ECAB 596, 600-01 (1991).

⁶ *See Ern Reynolds*, 45 ECAB 690, 695 (1994).

Accordingly, the decision of the Office of Workers' Compensation Programs dated January 11, 1996 is affirmed.

Dated, Washington, D.C.
April 2, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member