

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FORREST REINHOLD and U.S. POSTAL SERVICE,  
POST OFFICE, Iowa City, Iowa

*Docket No. 96-1635; Submitted on the Record;  
Issued May 6, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Worker's Compensation Programs abused its discretion in refusing to reopen appellant's claim for further consideration of the merits of his claim under 5 U.S.C. § 8128(a), on the grounds that his request for reconsideration was not timely filed and failed to show clear evidence of error.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for further consideration of the merits of his claim under 5 U.S.C. § 8128(a), on the grounds that his request for reconsideration was not timely filed and failed to show clear evidence of error.

On March 2, 1993 appellant, then a distribution clerk, filed a claim for an occupational disease (Form CA-2) alleging that he sustained an emotional condition causally related to factors of his employment. By decision dated July 27, 1993, the Office found the evidence of record insufficient to establish that an injury was sustained as alleged.

On July 26 and 29, 1994 appellant requested reconsideration of the Office's decision. Appellant's requests were accompanied by employment records, narrative statements, medical evidence and correspondence with the employing establishment.

By decision dated October 25, 1994, the Office vacated its July 23, 1994 decision on the grounds that the evidence of record was sufficient to establish fact of injury. By decision of the same date, the Office denied appellant's request for modification based on a merit review of the claim.

In an October 31, 1995 letter, appellant requested reconsideration of the Office's decision. Appellant submitted additional evidence. By decision dated January 29, 1996, the Office denied appellant's request for further consideration of the merits of his claim under 5 U.S.C. § 8128(a) on the grounds that his request for reconsideration was not timely filed within

the one-year time limitation period set forth in 20 C.F.R. § 10.138(b)(2) and that appellant did not show clear evidence of error on the part of the Office.

Because more than one year has elapsed between the Office's last merit decision, dated October 25, 1994, and the filing of appellant's appeal with the Board on May 1, 1996, the Board lacks jurisdiction to review the October 25, 1994 decision.<sup>1</sup> The only decision that the Board may review on appeal is the January 29, 1996 decision of the Office, which denied appellant's request for reconsideration on the grounds that his request was not timely filed and did not present clear evidence of error on the part of the Office.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of the Federal Employees Compensation Act.<sup>2</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>3</sup> When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.<sup>4</sup>

In this case, the Office properly determined that appellant failed to file a timely request for reconsideration. The Office issued its last merit decision in this case on October 25, 1994. Appellant filed his request for reconsideration on October 31, 1995. Inasmuch as more than one year elapsed between the Office's October 25, 1994 decision and appellant's October 31, 1995 request for reconsideration, the request for reconsideration was untimely filed.

The evidence submitted by appellant does not raise a substantial question as to the correctness of the Office's last merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim. In support of his untimely request, appellant submitted correspondence with the Office, an employee opinion survey report, an article regarding an Iowa Supreme Court decision allowing workers to collect compensation benefits for emotional conditions, employment records and narrative statements. The Board finds that the evidence submitted in support of appellant's untimely request, fails to raise a substantial question as to the correctness of the Office's October 25, 1994 decision. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's case for merit review under 5 U.S.C. § 8128(a) on the grounds that his application for review was not timely filed and failed to present clear evidence of error.

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<sup>1</sup> See 20 C.F.R. § 501.3(d)(2); see also *Herbert E. Widicamp*, 32 ECAB 1090 (1981).

<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.138(b)(2); *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

<sup>4</sup> *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

The January 29, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
May 6, 1998

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member