

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCINE E. LEWIS and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, Tex.

*Docket No. 97-13; Submitted on the Record;
Issued November 18, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for merit review on the grounds that it was untimely filed and failed to present clear evidence of error.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion in refusing to reopen appellant's claim as her requests for reconsideration were not timely filed and did not contain clear evidence of error on the part of the Office.

This claim was previously on appeal to the Board on two occasions. In its April 21, 1988¹ and February 5, 1990² decisions, the Board found that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits. The facts and circumstances of the case as set out in the Board's prior decisions are adopted herein by reference. Following the Board's February 5, 1990 decision, appellant requested an oral hearing which the Branch of Hearings and Review denied on October 31, 1993. Following the Board's February 5, 1990 decision, appellant requested reconsideration of the Office's February 28, 1984 merit decision on December 11, 1992, June 27, July 11 and July 26, 1996. By decisions dated January 9, 1992, July 5, July 18 and September 4, 1996, the Office declined to reopen appellant's claim for review of the merits on the grounds that her requests were untimely filed and did not present clear evidence of error on the part of the Office.

As more than one year has elapsed since the date of the Office's last merit decision, the February 28, 1994 decision, to the date of appellant's appeal to the Board on September 11, 1996, the only decisions before the Board on appeal are the September 4, July 18, and July 5, 1996 nonmerit decisions.³

¹ Docket No. 88-593.

² Docket No. 90-196.

³ 20 C.F.R. § 501.3(d)(2).

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁴ 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.⁵ 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.⁶

Since more than one year elapsed from the February 28, 1984 decision to appellant's 1996 applications for review, the requests for reconsideration are untimely. 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. Appellant failed to submit any medical evidence addressing the causal relationship between her diagnosed condition and factors of her federal employment. Therefore, this evidence cannot establish error on the part of the Office. Furthermore, appellant's reconsideration did not contain any argument which would support her claim for error on the part of the Office.

The decisions of the Office of Workers' Compensation Programs dated September 4, July 18 and July 5, 1996 are hereby affirmed.

Dated, Washington, D.C.
November 18, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.138(b)(2). *Gregory Griffin*, 41 ECAB 186 (1989) *petition for recon. denied*, 41 ECAB 458 (1990).

⁶ *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).