

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOIS BONO-ALLEN and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Miami, Fla.

*Docket No. 97-591; Submitted on the Record;
Issued November 25, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for reconsideration on the grounds that it was not timely filed and did not establish clear evidence of error.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by denying appellant's request for reconsideration on the grounds that it was not timely filed and did not establish clear evidence of error.

Appellant filed a claim on October 6, 1989 which the Office accepted for lumbar sprain and left ankle sprain on November 30, 1989. The Office entered appellant on the periodic rolls and by decision dated March 11, 1992, terminated appellant's compensation finding that she refused an offer of suitable work. Appellant requested reconsideration on April 10, 1992 and by decision dated April 22, 1992, the Office denied modification of its prior decision. Appellant requested reconsideration on July 13, 1992 and by decision dated August 3, 1992, the Office declined to reopen appellant's claim for review of the merits. On June 19, 1996 appellant submitted a request for reconsideration dated March 12, 1993. By decision dated August 15, 1996, the Office declined to reopen appellant's claim for review of the merits as the reconsideration request was not timely filed and did not contain clear evidence of error.

The only decision before the Board on this appeal is that of the Office dated August 15, 1996 in which it declined to reopen appellant's case on the merits because the request was not timely filed, and did not show clear evidence of error. Since more than one year elapsed from the date of issuance of the Office's April 22, 1992 merit decision to the date of the filing of appellant's appeal, on November 12, 1996, the Board lacks jurisdiction to review that decision.¹

¹ 20 C.F.R. § 501.3(d).

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).² 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.³ 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.⁴

Since more than one year elapsed from the April 22, 1992 decision to appellant's June 19, 1996 application for review, the request for reconsideration is untimely. Appellant submitted additional medical records with her request for reconsideration. These records did not provide a history of injury and opinion on the causal relationship between appellant's condition and her accepted employment injury and did not provide medical rationale explaining why appellant was unable to perform the duties of the offered position which had been approved by her attending physician. 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. Therefore, this evidence cannot establish error on the part of the Office. Furthermore, appellant's reconsideration request did not contain any argument which would support her claim for error on the part of the Office.

The decision of the Office of Workers' Compensation Programs dated August 15, 1996 is hereby affirmed.

Dated, Washington, D.C.
November 25, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

² 5 U.S.C. § 8128(a).

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

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