

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID R. DAVIS and U.S. POSTAL SERVICE,  
POST OFFICE, Kansas City, Mo.

*Docket No. 96-2467; Submitted on the Record;  
Issued September 15, 1998*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

On September 11, 1991 appellant, then a 38-year-old city carrier, filed a claim for compensation alleging that on that day he strained his right knee while in the performance of duty. The Office accepted the claim for right knee strain and approved arthroscopic surgery. On January 19, 1993 appellant filed a claim for recurrence of disability attributing his difficulty in entering and exiting the postal vehicle, inability to extend fully his right knee, and stiffness and need to "stretch and bend knee if standing too long" to his September 11, 1991 employment injury. Appellant stated that the recurrence of disability occurred on January 9, 1993 but that he was unable to work from January 12 through January 19, 1993 as a result of his medical condition.<sup>1</sup>

On July 26, 1994 the Office, in a decision, denied appellant's claim on the grounds that the evidence of file failed to establish a causal relationship between the claimed recurrence of disability and the employment injury.

In a memorandum of a telephone call dated August 4, 1994, the Office noted that appellant called the Office to request a schedule award determination. The claims examiner noted that "[Appellant] had surgery about two and a half years ago and would like a schedule award evaluation," and that appellant "was denied recurrence of disability and may be exercising his appeal rights but will get 'better' medical evidence."

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<sup>1</sup> The Board notes that the employing establishment listed January 12, 1993 as the date of appellant's recurrence of disability.

In a letter dated August 19, 1994, appellant stated that he was writing in response to the Office's July 26, 1994 decision in which his recurrence of disability was denied. Appellant stated that "I am providing additional information regarding the incident for your review," noting that he reinjured his knee on January 11, 1993<sup>2</sup>; that he was advised by his orthopedic surgeon to remain off the knee until the swelling subsided; and that Dr. William J. Legg, appellant's treating physician and an osteopath, advised him to stay off his knee until approximately January 18, 1994. Appellant also attached a copy of Dr. Legg's September 8, 1993 report in which he stated that appellant had a November 15, 1991 ligamentous tear, and an August 12, 1994 medical report in which he stated that, as an addendum to his September 8, 1993 report, he had advised appellant to rest the knee for a few days at that time, after which he was able "to return to work."

By letter dated January 17, 1996, the Office notified appellant that his claim for recurrence of disability was denied in July 1994 and that no treatment or surgery had been authorized.<sup>3</sup>

On February 22, 1996 appellant requested reconsideration of his claim. By decision dated May 28, 1996, the Office denied appellant's request for reconsideration on the grounds that it was untimely filed and failed to show clear evidence of error. The Office noted that it was referring the case to a claims examiner for possible entitlement to a schedule award.

The Board finds that the case is not in posture for decision.

Section 10.138(b)(1) of the Office's regulations provides that the Office:

"[M]ay review an award for or on application of the claimant. No formal application for review is required, but the claimant must make a written request identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to reconsider, and give the reasons why the decision should be changed. Where the decision or issue cannot be reasonably determined from the claimant's application for review, the application will be returned to the claimant for clarification without further action by the Office with respect to the application."<sup>4</sup>

In this case, the Board finds that appellant's August 19, 1994 letter to the Office in which he specified that he was writing "in response to [the Office's] letter of July 26, 1994 in which my claim for a recurrence of disability was disallowed" is in conformance with section 10.138(b)(1) in that appellant's request for request for reconsideration was in writing, specified the decision and provided medical evidence that addressed the employment-related injury for which appellant filed his initial claim. Further, given that the Office's decision denied appellant's claim on the grounds of failure to establish causal relationship, the issue that appellant disputed can be

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<sup>2</sup> The Board notes that in his August 19, 1994 letter appellant listed January 11, 1993 vice January 9, 1993 as the date of his recurrence of disability.

<sup>3</sup> The Office noted that its letter was in response to appellant's undated request.

<sup>4</sup> 20 C.F.R. § 10.138(b)(1).

reasonably determined.<sup>5</sup> The Board finds that the Office erred in failing to consider appellant's August 19, 1994 letter as a timely filed request for reconsideration and its May 28, 1996 decision in which it denied appellant's February 22, 1996 request for reconsideration. Accordingly, the Board finds that appellant is entitled to a merit review of his claim under section 10.138(b)(1) of Title 20 of the Code of Federal Regulations.<sup>6</sup>

The May 28, 1996 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.  
September 15, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>5</sup> *Id.*

<sup>6</sup> *See Ruth Hickman*, 42 ECAB 847 (1991).