

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRY D. PASHA and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION, Detroit, MI

*Docket No. 98-1968; Submitted on the Record;
Issued December 8, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly found that appellant's request for reconsideration was 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.

By decision dated September 11, 1996, the Office denied appellant's claim for a traumatic injury allegedly occurring on July 22, 1996 to her left knee and foot, stating that she failed to establish the fact of injury.

By letter dated January 19, 1998, received by the Office on October 27, 1998, appellant requested reconsideration of the Office's decision. She stated that she did not receive notice that her claim had been denied until November 1997 when she spoke with Christine Chrzanowski, apparently an Office employee. Appellant stated that Ms. Chrzanowski had previously told her that her claim had been approved, and had given her the approval number which in turn she gave to a collection agency. Appellant stated that when Ms. Chrzanowski informed her that her claim had been denied, she sent appellant a copy of the "claim," presumably meaning the Office's September 11, 1996 decision. Appellant stated that she was currently being sued for payment of medical expenses for surgery related to her alleged July 22, 1996 employment injury. Appellant submitted evidence of the lawsuit.

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

¹ 5 U.S.C. § 8128(a).

decision.² When an application for review is untimely, the Office takes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.³

The Board finds that, since more than one year had elapsed since the date of issuance of the Office's September 11, 1996 merit decision to the date that appellant's request for reconsideration was filed, January 27, 1998, appellant's request for reconsideration is untimely. Moreover, 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 September 11, 1996 merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim. In this regard, appellant stated that she did not receive a copy of the Office's September 11, 1996 decision until approximately November 1997 when she called the Office. It is presumed, in the absence of evidence to the contrary, that a document properly addressed to appellant and mailed in the ordinary course of business was received. The Office noted in its April 27, 1998 decision that appellant's address was unchanged from the time the decision was issued and the decision was not returned to the Office. The cover page of the September 11, 1996 decision shows that it was mailed to appellant's correct address. There is no evidence to the contrary. In her request for reconsideration, appellant also stated that she was being sued for failure to pay medical expenses for surgery related to her alleged July 22, 1996 employment injury. This statement and the supporting evidence appellant submitted is not relevant to the issue of whether appellant actually sustained a work-related injury on July 22, 1996. As appellant has not, by the submission of evidence, raised a substantial question as to the correctness of the Office's September 11, 1996 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.

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

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

The decision of the Office of Workers' Compensation Programs dated April 27, 1998 is hereby affirmed.

Dated, Washington, D.C.
December 8, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member