

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEOMA R. MUNN and U.S. POSTAL SERVICE,
POST OFFICE, Flushing, N.Y.

*Docket No. 97-1881; Submitted on the Record;
Issued February 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to further review the merits of appellant's claim under 5 U.S.C. § 8128.

On May 9, 1995 appellant filed an occupational disease claim alleging that she sustained herniated discs causally related to factors of her federal employment. By decision dated January 19, 1996, the Office denied appellant's claim on the grounds that the evidence did not establish fact of injury.

By letter dated April 26, 1996, received by the Office on May 2, 1996, appellant requested reconsideration.

By decision dated April 18, 1997, the Office found that, as appellant's letter requesting reconsideration did not raise substantial legal questions or include relevant evidence not previously considered, it was insufficient to warrant review of the prior merit decision.

The Board finds that the Office abused its discretion by refusing to further review the merits of appellant's claim under 5 U.S.C. § 8128.

The only Office decision before the Board on this appeal is the Office's April 18, 1997 decision finding that appellant did not submit sufficient evidence in support of her application for reconsideration to warrant review of its prior decision. Since more than one year has elapsed between the date of the Office's most recent merit decision on January 19, 1996 and the filing of appellant's appeal on May 19, 1997, the Board lacks jurisdiction to review the merits of appellant's claim.¹

¹ 20 C.F.R. § 501.3(d)(2). See 20 C.F.R. § 501.2(c).

The Office's procedure manual provides: "When a reconsideration decision is delayed beyond 90 days, and the delay jeopardizes the claimant's right to have review of the merits of the case by the Board, the [Office] should conduct a merit review."²

In the present case, the most recent merit decision is the Office's January 19, 1996 decision. The Office did not issue a decision on appellant's April 26, 1996 request for reconsideration until April 18, 1997. As this was more than a 90-day delay and it jeopardized appellant's right to have the Board review the merits of her claim, the Office should have issued a decision on the merits of her claim in conformance with its procedures.³

The decision of the Office of Workers' Compensation Programs dated April 18, 1997 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
February 12, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.9 (May 1996).

³ *Carlos Tola*, 42 ECAB 337 (1991).