

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICKIE I. THOMAS and U.S. POSTAL SERVICE,
POST OFFICE, Washington, D.C.

*Docket No. 97-1596; Submitted on the Record;
Issued January 7, 1999*

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 requests for reconsideration on the grounds that they were untimely filed and failed to demonstrate clear evidence of error.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly denied appellant's requests for reconsideration as they were untimely filed and failed to present clear evidence of error.

By decision dated October 28, 1993, the Office denied appellant's claim for recurrence of disability for right thumb strain and tenosynovitis on the grounds that the evidence of record failed to establish that the claimed recurrence of disability on or after October 1991 was causally related to the January 15, 1988 work-related injury. Appellant claimed that her initial injury never healed although she was able to work an eight-hour day with restrictions.¹

By an undated letter received by the Office on February 2, 1996, appellant requested reconsideration. By decision dated February 29, 1996, the Office denied appellant's reconsideration request as untimely filed and found that appellant submitted no evidence in support of her request.

By an undated letter received by the Office on February 20, 1996, appellant requested that the Branch of Hearings and Review reconsider the Office's decision denying benefits. On March 25, 1996 the Branch of Hearings and Review denied appellant's request as untimely filed.²

¹ By letter dated June 22, 1993, the Office advised appellant regarding the kind of medical evidence required to support a claim for recurrence of disability.

² The Board notes that the Branch of Hearings and Review considered appellant's request to be for an oral

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).³ 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.⁴ 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.⁵

The Board finds that, since more than one year has elapsed from the date of issuance of the Office's October 28, 1993 merit decision to the date that appellant's requests for reconsideration were filed, February 2 and 20, 1996, appellant's requests for reconsideration were untimely. The Board further finds that appellant failed to submit evidence which would raise a substantial question as to the correctness of the Office's October 28, 1993 merit decision and therefore failed to shift the weight of the evidence in favor of appellant's claim.

As appellant has not, by the submission of factual and medical evidence, raised a substantial question as to the correctness of the Office's October 28, 1993 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.

hearing.

³ 5 U.S.C. § 8128(a).

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

⁵ *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

The decisions of the Office of Workers' Compensation Programs dated March 25 and February 29, 1996 are hereby affirmed.⁶

Dated, Washington, D.C.
January 7, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁶ The Board notes that subsequent to the Office's October 28, 1993 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).