

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE TRIGG and DEPARTMENT OF THE NAVY,
MARE ISLAND NAVAL SHIPYARD, San Diego, CA

*Docket No. 97-2271; Submitted on the Record;
Issued November 3, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

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

The only issue before the Board on this appeal is the Office's January 12, 1994 decision denying appellant's request for reconsideration on the basis that it was not filed within the one-year time limit set forth by 20 C.F.R. § 10.138(b)(2) and did not present clear evidence of error. Since more than one year has elapsed between the date of the Office's most recent merit decision on November 5, 1992¹ and the filing of appellant's appeal on April 5, 1994, the Board lacks jurisdiction to review the merits of appellant's claim.²

The Board finds that the Office improperly found that appellant's request for reconsideration was untimely.

¹ Although the last page of the Office hearing representative's decision is dated November 3, 1992, the page containing appellant's appeal rights is dated November 5, 1992.

² 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the final decision being appealed.

Section 8128(a) of the Federal Employees' Compensation Act³ does not entitle a claimant to a review of an Office decision as a matter of right.⁴ This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.⁵

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, the Office has stated that it 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.⁶ The Board has found that the imposition of this one-year limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).⁷

In the present case, the Office found, by its January 12, 1994 decision, that the one-year time limit for filing a request for reconsideration of the Office's November 5, 1992 decision expired on November 4, 1993 and that appellant's request for reconsideration, received by the Office on November 5, 1993, was untimely.

In this case, appellant filed his request for reconsideration by letter dated November 4, 1993 and hand-delivered and stamped received by the office on November 5, 1993.

In *Diane Matchem*,⁸ the Board found that a request for reconsideration of a May 19, 1993 decision that was filed May 19, 1994 was timely. Similarly, it is apparent that appellant's request for reconsideration filed on November 5, 1993 was timely as to the Office's November 5, 1992 decision. The Office therefore improperly found that the request was untimely and improperly imposed the clear evidence of error standard for review of the evidence submitted in support of the request for reconsideration. The case is remanded to the Office for proper consideration of appellant's timely request for reconsideration.

³ 5 U.S.C. § 8128(a).

⁴ *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁵ *Leon D. Faidley, Jr.*, *supra* note 4. Compare 5 U.S.C. § 8124(b) which entitles a claimant to a hearing before an Office hearing representative as a matter of right provided that the request for a hearing is made within 30 days of a final Office decision and provided that the request for a hearing is made prior to a request for reconsideration.

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ *Leon D. Faidley, Jr.*, *supra* note 4.

⁸ 48 ECAB __ (issued June 3, 1997).

The January 12, 1994 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
November 3, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member