

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REINA LASSALLE and U.S. POSTAL SERVICE,
POST OFFICE, San Juan, PR

*Docket No. 98-2132; Submitted on the Record;
Issued July 10, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On October 30, 1980 the Office accepted that appellant, then a 53-year-old mail clerk, sustained employment-related bilateral carpal tunnel syndrome. On August 16, 1991 she filed a recurrence claim alleging that on that date she sustained a recurrence of disability. She had been on limited duty and began working four hours per day on August 15, 1991. By letter dated August 27, 1991, the Office informed appellant of the type of information needed to support her claim, and she submitted numerous medical reports. She stopped work on December 6, 1991. By check dated March 19, 1993, appellant received wage-loss compensation for the period January 10 to December 31, 1991. In a June 21, 1993 letter, she inquired about the status of her claim, and continued to submit medical reports. By letters dated June 24 and October 11, 1994, the Office informed appellant that she must file a recurrence of disability claim, and on October 26, 1994 she filed a second recurrence claim, stating that the date of recurrence was December 6, 1991.

By decision dated January 3, 1995, the Office denied the recurrence of disability claim on the grounds that the evidence of record failed to demonstrate a causal relationship between the injury and the claimed period of disability. On January 24, 1995 appellant requested reconsideration and submitted additional medical evidence. In an April 26, 1995 decision, the Office denied modification of the prior decision. On July 4, 1995 appellant again requested reconsideration and submitted medical evidence. By decision dated October 5, 1995, the Office denied modification of the prior decision. On October 26, 1995 appellant requested a hearing.

In a December 28, 1995 decision, an Office hearing representative denied the hearing request.¹ On January 26, 1996 appellant requested reconsideration and submitted a medical report. In an April 29, 1996 decision, the Office denied appellant's reconsideration request. On June 17, 1996 appellant again requested reconsideration and submitted additional evidence. By letter dated August 8, 1996, the Office informed appellant of the type evidence needed to support her claim, to include a report from her physician explaining why she could no longer perform her modified duty. Appellant submitted an additional medical report and, in a September 30, 1996 decision, the Office denied modification of the prior decision. On November 12, 1996 appellant requested reconsideration and submitted additional medical evidence. In a decision dated January 14, 1997, the Office denied modification of the prior decision.

In a letter dated January 12, 1998 and stamped received by the Office on January 14, 1998, appellant's representative requested reconsideration and submitted medical evidence. In a letter dated January 14, 1998 and stamped received by the Office on January 22, 1998, appellant's representative reported that he had sent the reconsideration request dated January 12, 1998 by express mail and included a reference number. He also submitted additional evidence.² By decision dated April 6, 1998, the Office denied appellant's reconsideration request on the grounds that the medical evidence submitted was cumulative and repetitive and provided no rationale. The Office further referenced the "clear evidence of error standard. The instant appeal follows.

The Board finds that appellant's January 12, 1998 request for reconsideration of the Office's decision dated January 14, 1997 was timely filed. However, the only decision before the Board in this appeal is the decision dated April 6, 1998 in which the Office denied appellant's application for review on the double grounds that the evidence was cumulative, repetitive, without rationale as well as failed to establish clear evidence of error. Since more than one year had elapsed between the date of the Office's most recent merit decision dated January 14, 1997 and the filing of appellant's appeal on July 1, 1998, the Board lacks jurisdiction to review the merits of appellant's claim.³

Section 8128(a) of the Federal Employees' Compensation Act⁴ does not entitle a claimant to a review of an Office decision as a matter of right.⁵ This section, vesting the Office

¹ The hearing representative found that, since appellant had previously requested reconsideration, she was not entitled to a hearing as a matter of right and, as the issue in the case could be addressed through a reconsideration application, the hearing request was denied.

² This included a report dated December 5, 1997 from Dr. Jose F. Irizarry who is Board-certified in internal medicine and rheumatology

³ 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 Office's final decision being appealed. Section 501.2 provides that the Board's review of a case shall be limited to the evidence in the case record which was before the Office at the time of its final decision. The Board is unable to consider evidence for the first time on appeal; *see Marlene K. Cline*, 43 ECAB 580 (1992).

⁴ 5 U.S.C. § 8128(a).

⁵ *See Jesus D. Sanchez*, 41 ECAB 964 (1990).

with discretionary authority to determine whether it will review an award for or against compensation, provides:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

The Office, through its 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 time limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).⁷

The one-year time limitation begins to run on the date of the original Office decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. In this case, the Office issued a merit decision on January 14, 1997 and, in a letter dated January 12, 1998 and stamped received by the Office on January 14, 1998, appellant’s representative requested reconsideration. Appellant, thus, timely filed her request for reconsideration within one year of the previous merit decision and submitted a subsequent report of Dr. Irizarry dated December 5, 1997 which contained sufficient new relevant evidence as to require a merit review pursuant to 20 C.F.R. § 10.138(b) of the regulations. The Board will remand this case to the Office for a merit review.

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ *Jesus D. Sanchez*, *supra* note 5.

The decision of the Office of Workers' Compensation Programs dated April 6, 1998 is hereby set aside and the case is remanded to the Office for a merit review.

Dated, Washington, D.C.
July 10, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member