

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN V. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, MD

*Docket No. 98-2481; Submitted on the Record;
Issued June 20, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
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 the grounds that it filed and failed to demonstrate clear evidence of error.

On December 18, 1995 appellant, then a 44-year-old maintenance support clerk, filed an occupational disease claim, alleging that employment factors caused job-related stress. She had stopped work on September 13, 1995. Following further development, by decision dated May 10, 1996, the Office denied the claim, finding that appellant had not sustained an injury in the performance of duty. On May 28, 1996 appellant requested a hearing that was held on December 20, 1996. In a May 16, 1997 decision, an Office hearing representative affirmed the prior decision. On May 6, 1998 appellant requested reconsideration and submitted additional evidence. By decision dated May 15, 1998, the Office denied appellant's reconsideration request, finding that she failed to demonstrate clear evidence of error. The instant appeal follows.

The only decision before the Board is the Office's May 15, 1998 decision denying appellant's request for reconsideration of the May 16, 1997 decision of the Office hearing representative. Because more than one year had elapsed between the issuance of this decision and August 14, 1998, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the May 16, 1997 Office decision.¹

The Board finds that appellant's May 6, 1998 request for reconsideration was timely filed.

¹ See 20 C.F.R. § 501.3(d)(2).

Section 8128(a) of the Federal Employees' Compensation Act² does not entitle a claimant to a review of an Office decision as a matter of right.³ This section, vesting the Office 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.⁴ 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).⁵ 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, an Office hearing representative issued a decision on May 16, 1997 and on May 6, 1998 appellant requested reconsideration. Appellant, thus, timely filed her request for reconsideration within one year of the previous merit decision and the Office abused its discretion in denying her reconsideration request on the grounds that she failed to demonstrate clear evidence of error.⁶ As the Office erroneously reviewed the evidence submitted in support of appellant's reconsideration request under the clear-evidence-of-error standard, the Board will remand the case to the Office for review of this evidence under the proper standard of review.⁷

² 5 U.S.C. § 8128(a).

³ See *Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Jesus D. Sanchez*, *supra* note 3.

⁶ The Board notes that the record contains a letter dated December 23, 1996, in which appellant's attorney expressed that appellant was “considering” a reconsideration request and an October 17, 1997 letter from appellant in which she requested an “oral appeal.” On November 5 and 10, 1997 the Office faxed information to appellant.

⁷ The Board notes that appellant submitted additional evidence with her appeal to the Board. This was thus submitted subsequent to the September 2, 1998 Office decision and the Board cannot consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated May 15, 1998 is hereby vacated and the case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
June 20, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member