

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHYLLIS M. RUEST and DEPARTMENT OF THE TREASURY,
BUREAU OF CUSTOMS AREA SAC, Miami, FL

*Docket No. 99-425; Submitted on the Record;
Issued June 13, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly found that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly determined that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

The only decision before the Board on this appeal is the Office's September 1, 1998 decision denying appellant's request for a review on the merits of its May 19, 1994 decision. Because more than one year has elapsed between the issuance of the Office's May 19, 1994 decision and November 10, 1998, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the Office's May 19, 1994 decision and prior decisions.¹

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).² 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.³ When an application for review is untimely, the Office takes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.⁴

¹ See 20 C.F.R. § 501.3(d)(2).

² 5 U.S.C. § 8128(a).

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

⁴ *Thankamma Matthews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

The Board finds that, since more than one year has elapsed from the date of issuance of the Office's May 19, 1994 merit decision to the date that appellant's request for reconsideration was filed, August 8, 1997, appellant's request for reconsideration is untimely.⁵ The Board further finds that the evidence submitted by appellant in support of such request does not raise a substantial question as to the correctness of the Office's May 19, 1994 merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim.

In her request for reconsideration, appellant submitted a report from her treating physician, Dr. Herbert R. Slavin, a Board-certified cardiovascular medicine specialist with a subspecialty in internal medicine, dated August 6, 1997, in which he stated that appellant was under his care for management of chronic low back pain secondary to the January 7, 1991 employment injury. He stated that appellant continued to experience pain, that a recent laboratory evaluation of C-Reactive Protein revealed "it to be elevated," and the result was consistent with chronic inflammation and appellant's chronic low back pain. Dr. Slavin's report does not contain a rationalized medical opinion explaining how appellant's current back problem is causally related to the January 7, 1991 employment injury. It therefore is of little probative value.⁶ Appellant has not shown by the evidence she submitted in support of her request for reconsideration that the Office clearly erred when it terminated appellant's compensation benefits on November 14, 1993.

For these reasons, the Office did not abuse its discretion by refusing to reopen appellant's case for merit review under 5 U.S.C. § 8128(a) on the grounds that her application was not timely filed and failed to present clear evidence of error.

⁵ In her request for reconsideration, appellant references a motion for rehearing to which the Office did not respond but the record does not contain that motion.

⁶ See *Jacquelyn L. Oliver*, 48 ECAB 232, 236 (1996).

The decision of the Office of Workers' Compensation Programs dated September 1, 1998 is hereby affirmed.

Dated, Washington, D.C.
June 13, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member