

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAXINE D. RUFFIN and DEPARTMENT OF THE NAVY,
MEDICAL CENTER, Portsmouth, VA

*Docket No. 99-462; Submitted on the Record;
Issued June 2, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

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 was untimely filed and failed to demonstrate clear evidence of error.

On April 25, 1996 appellant, then a 52-year-old supervisory medical records technician for the tumor registry, filed an occupational disease claim, alleging that employment factors caused job-related stress. She stopped work on April 26, 1996. By letter dated September 23, 1996, the Office informed appellant of the type evidence needed to support her claim and, following further development, by decision dated November 7, 1996, denied the claim. The Office found that the medical evidence failed to establish that appellant's emotional condition was causally related to the one compensable factor of employment. On November 7, 1997 appellant faxed a request for reconsideration to the Office. She had previously submitted additional evidence. By decision dated September 2, 1998, the Office denied appellant's reconsideration request on the grounds that it was untimely filed and she failed to demonstrate clear evidence of error. The instant appeal follows.

The only decision before the Board is the Office's September 2, 1998 decision denying appellant's request for reconsideration of the November 7, 1996 Office decision. Because more than one year had elapsed between the issuance of this decision and November 6, 1998, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the November 7, 1996 Office decision.¹

The Board finds that appellant's November 7, 1997 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 following 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 decision on November 7, 1996 and on November 7, 1997 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 by applying an improper legal standard reserved for cases where reconsideration is requested more than one year later. Thus, 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.⁶

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 appellant submitted additional evidence with her appeal to the Board. This evidence was 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 September 2, 1998 is hereby vacated, and the case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
June 2, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member