

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETSY LIMPO and U.S. POSTAL SERVICE,
PROCESSING & DELIVERY CENTER, Goleta, CA

*Docket No. 00-1285; Submitted on the Record;
Issued April 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

On November 16, 1995 appellant, then a 43-year-old mail processor, filed a claim alleging that she sustained a left arm contusion in the performance of duty on November 11, 1995. The Office accepted the claim for a left arm contusion. By decision dated November 6, 1998, the Office determined that residuals of the employment injury had ceased. In a letter dated November 8, 1999, appellant requested reconsideration and submitted additional evidence.

By decision dated February 2, 2000, the Office determined that appellant's request was untimely and failed to show clear evidence of error.

With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.¹ As appellant filed her appeal on February 6, 2000, the only decision over which the Board has jurisdiction on this appeal is the February 2, 2000 decision denying her request for reconsideration as untimely.

The Board finds that appellant's request for reconsideration was timely and, therefore, the case must be remanded to the Office.

¹ See 20 C.F.R. § 501.3(d).

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 vests the Office with discretionary authority to determine whether it will review an award for or against compensation.⁴ The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a).⁵ 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 this case, appellant had one year from the November 6, 1998 decision to request reconsideration. The Board notes, however, that November 6, 1999 falls on a Saturday. It is well established that when a time limitation expires on a nonbusiness day, the limitation is extended to include the next business day.⁸ Therefore, appellant had until Monday, November 8, 1999 to file a timely request for reconsideration. Appellant's request is dated November 8, 1999; the record does not contain an envelope with a postmark. If the postmark is not available, the date of the letter is the date of filing.⁹ Accordingly, the date of filing is November 8, 1999. Appellant has, therefore, submitted a timely request for reconsideration, which must properly be considered under the appropriate standard.

² 5 U.S.C. § 8128(a).

³ *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁴ Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application."

⁵ Thus, although it is a matter of discretion on the part of the Office whether to review an award for or against payment of compensation, the Office has stated that a claimant may obtain review of the merits of a claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office; *see* 20 C.F.R. § 10.606(b).

⁶ 20 C.F.R. § 10.607(a).

⁷ *See Leon D. Faidley, Jr.*, *supra* note 3.

⁸ *See Gary J. Martinez*, 41 ECAB 427 (1990); FECA Program Memorandum No. 250.

⁹ *Willie H. Walker, Jr.*, 45 ECAB 126 (1993).

The decision of the Office of Workers' Compensation Programs dated February 2, 2000 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
April 17, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member