

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GLADYS MERCADO and U.S. POSTAL SERVICE,  
GENERAL POST OFFICE, San Juan, PR

*Docket No. 00-898; Submitted on the Record;  
Issued February 12, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was untimely filed and did not demonstrate clear evidence of error.

On April 24, 1998 appellant, then a 42-year-old postal worker, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that her carpal tunnel syndrome in both hands was caused by her employment. Along with her claim, appellant included a report and note from Dr. Edwin Rosario Rios, a physiatrist, diagnosing her with bilateral carpal tunnel syndrome.

By decision dated August 18, 1998, the Office denied appellant's claim stating that the medical evidence submitted was not sufficient to establish that her condition was caused by her employment, as required by the Federal Employees' Compensation Act.

On February 22, 1999 appellant wrote a letter to the Office expressing her dissatisfaction with the outcome of her claim. In a one-and-a-half page type-written letter, she stated: "I sincerely feel that my claim has not been answered and also consider that no one has taken my health condition in consideration." She continued: "I feel that the Department of Labor has not given my claim the opportunity to be studied thoroughly." "I am simply asking to be considered and not penalized for being injured in my work area" and "please inform me how to reopen my case." Appellant also submitted a September 8, 1998 report from Dr. Jose E. Palacios Crespo.<sup>1</sup>

On October 14, 1999 appellant requested reconsideration of the Office's August 18, 1998 decision.

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<sup>1</sup> The Office received additional medical evidence which was not before the Office at the time of its August 18, 1998 decision.

By decision dated November 1, 1999, the Office denied appellant's request for reconsideration, basing their decision on appellant's October 14, 1999 letter, which was not received within one year of the August 18, 1998 decision.

The Board has duly reviewed the case record and concludes that the February 22, 1999 letter should be construed as appellant's request for reconsideration and thus the request was filed in a timely manner.

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.<sup>2</sup> 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).<sup>3</sup>

In those cases where a request for reconsideration is not timely filed, the Board has held, however, that the Office must nevertheless undertake a limited review of the case to determine whether there is clear evidence of error pursuant to the untimely request.<sup>4</sup> Office procedures state that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the claimant's application for review shows "clear evidence of error" on the part of the Office.<sup>5</sup>

In *Vincent P. Taimanglo*<sup>6</sup> and *Jeanette Butler*,<sup>7</sup> the Board found that letters written by the employees constituted timely requests for reconsideration even though they did not mention the word "reconsideration." In *Taimanglo*, the Board stated that "while no special form is required, the request must be made in writing, identify the decision and the specific issue(s) for which reconsideration is being requested, and be accompanied by relevant and pertinent new evidence or argument not considered previously."<sup>8</sup> In *Taimanglo*, the employee had identified the Office decision in his letter, indicated that additional medical evidence had been submitted, and stated that he was waiting for a response. The Board found that the letter constituted a timely request for reconsideration. In *Butler*, the employee requested that the Office reopen her case, and included the case number and medical evidence with her letter. The Board found that her letter constituted a request for reconsideration.

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<sup>2</sup> 20 C.F.R. § 10.607.

<sup>3</sup> *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>4</sup> *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

<sup>5</sup> See 20 C.F.R. § 10.607(b) (1999).

<sup>6</sup> *Vincent P. Taimanglo*, 45 ECAB 504 (1994).

<sup>7</sup> *Jeanette Butler*, 47 ECAB 128 (1995).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.2 (May 1996); *Vincent P. Taimanglo*, *supra* note 6.

In this case, appellant requested in her February 22, 1999 letter that the Office help her reopen her case, stated her case number and provided new medical evidence. Appellant made several arguments, contending that her condition developed during the 10 years that she worked on the flats sorter machine. She also submitted a medical report from Dr. Crespo. Considering these factors, the Board finds that appellant's February 22, 1999 letter constitutes a request for reconsideration. Since the date of the Office's final decision was August 18, 1998, and appellant's letter was dated February 22, 1999 and received on March 1, 1999, appellant's request was timely.

As appellant's request for reconsideration was filed in a timely manner, the Board will remand the case to the Office for an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated November 1, 1999 is hereby remanded for action consistent with this decision of the Board.

Dated, Washington, DC  
February 12, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member