

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SANDRA WILLIAMS and U.S. POSTAL SERVICE,  
POST OFFICE, Gary, IN

*Docket No. 00-1307; Submitted on the Record;  
Issued July 27, 2001*

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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 reinstatement of her benefits was an untimely request for reconsideration.

On May 19, 1995 appellant, then a 37-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). Appellant asserted that on May 17, 1995 she sustained injuries to her left knee, back and neck when the driver of a truck broadsided her in the vehicle she was driving in the course of her employment. Appellant stopped work and returned on June 26, 1995. Appellant stopped working on July 11, 1995 and filed a claim for recurrence for complaints of pain in her back, neck, knee and shoulder.

The Office accepted the claim for cervical strain, lumbosacral strain, left knee contusion and chest contusion. Appellant received appropriate compensation benefits, underwent vocational rehabilitation and was terminated from her employment on September 4, 1997. By decision dated October 9, 1998, appellant's compensation was reduced to reflect her wage-earning capacity as a program manager. In a letter received by the Office on October 30, 1998, appellant requested reconsideration. By decision dated December 9, 1998, the Office found that appellant's request for review to be immaterial in nature and not sufficient to warrant a merit review. By letter dated April 12, 1999, the Office made a preliminary finding that appellant was overpaid compensation benefits in the amount of \$406.32. By letter dated May 28, 1999, the Office found that appellant was without fault and absolved appellant from any debt resulting from the overpayment.

On November 16, 1999 the Office stated that appellant would receive compensation for temporary total disability for the period November 7 through December 4, 1999. The Office indicated that appellant's monthly compensation was \$269.75. The Office also informed appellant that employees entitled to both Office benefits and the Office of Personnel Management (OPM) benefits must elect, which benefit to receive. The Office advised appellant that "this election is not irrevocable and can be changed should you decide that the benefits of the other plan are more advantageous."

On January 5, 2000 the Office received an incomplete Form CA-1105 from appellant. She had handwritten on the form that she would like to see her original benefits reinstated before she made her decision regarding her election of benefits. The election form indicated that appellant understood she was not entitled to receive Federal Employees' Compensation Act benefits concurrently, except for a schedule award. The election form did not contain an effective date for the election of Civil Service Retirement System (CSRS) benefits.

By letter dated January 4, 2000, appellant requested "reconsideration" stating that she had received the amount of her disability retirement. Appellant indicated that it was her understanding that she could choose between OPM and workers' compensation. She noted that, since her disability retirement from her original position as a mail carrier was approved, she requested a reinstatement of her original amount of workers' compensation.

By decision dated January 11, 2000, the Office rejected appellant's request for reconsideration on the grounds that the request was untimely and did not present clear evidence of error.

The Board finds that the Office improperly determined that appellant's letter was an untimely request for reconsideration.

In the present case, appellant indicated that she was filing a request for "reconsideration," however, it is evident from her letter that she was making an election for her workers' compensation instead of her disability retirement. It is well established that a claimant may elect workers' compensation benefits or OPM benefits. The request for reconsideration is not a request for a review of the October 9, 1998 decision under 5 U.S.C. § 8128. It is a request for an election of benefits.<sup>1</sup>

The Office improperly characterized appellant's letter as a request for reconsideration subject to the one-year time limitation set forth in 20 C.F.R. § 10.606(a). The Board finds that appellant has requested an election of benefits and is entitled to a merit decision on that issue. On remand, the Office should develop the record as necessary to issue an appropriate determination regarding her request for election of benefits.

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<sup>1</sup> A similar situation is presented when a claimant requests an increased schedule award. The Office's procedure manual notes the distinction between a claim for an increased schedule award and a review of the original award based on an incorrect calculation. Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(b)(3) (March 1995).

The decision of the Office of Workers' Compensation Programs dated January 11, 2000 is set aside and the case remanded for further proceedings consistent with this decision.

Dated, Washington, DC  
July 27, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member