

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARLENE HUNTER and DEPARTMENT OF VETERANS AFFAIRS,
JAMES A. HALEY VETERANS HOSPITAL, Tampa, FL

*Docket No. 00-1781; Submitted on the Record;
Issued September 20, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

In a decision dated October 14, 1999, the Office refused to reopen appellant's request for reconsideration dated August 25, 1999 on the grounds that the request was untimely filed and that appellant failed to present clear evidence that the Office's final merit decision was erroneous. In an attached memorandum, the Office further noted: "In the most recent reconsideration request, [appellant's counsel] indicated that a deposition from Dr. Anthony Kirkpatrick, an anesthesiologist, was being submitted.... I am unable to locate any attachment to his letter."

However, the record contains a deposition from Dr. Kirkpatrick dated August 18, 1999 and received by the Office on September 7, 1999 the same date that the Office received the request for reconsideration. Because the Office did not review evidence that appellant timely submitted in support of her request for reconsideration, the case must be remanded to the Office for consideration of that evidence. Upon review of the deposition, the Office will issue an appropriate decision in accordance with section 10.607 of the Code of Federal Regulations.¹

¹ 20 C.F.R. § 10.607 provides that an application for reconsideration must be sent within one year of the date of the Office decision for which review is sought. The Office will consider an untimely application only if the application demonstrates clear evidence of error on the part of the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.

The October 14, 1999 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
September 20, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member