

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD J. MURRAY, JR. and DEPARTMENT OF THE ARMY,
U.S. ARMY CORPS OF ENGINEERS, Vicksburg, MS

*Docket No. 01-1959; Submitted on the Record;
Issued April 12, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

This case has previously been on appeal before the Board. By decision dated November 29, 2000, the Board affirmed the Office's decisions dated August 3, June 11 and March 2, 1999, finding that appellant had not established that he sustained an injury on May 13, 1997 as alleged. The Board also affirmed the Office's denial of appellant's request for reconsideration. The facts and circumstances of the case are completely set out in that decision and are hereby incorporated by reference.¹

In a letter dated December 28, 2000, appellant again requested reconsideration and submitted evidence in support of his request.

In a March 27, 2001 decision, the Office denied appellant's application of reconsideration on the grounds that the request was not timely and that appellant did not present clear evidence of error by the Office.

The Board finds that the Office improperly denied appellant's requests for reconsideration under section 8128(a) of the Federal Employees' Compensation Act on the grounds that the request was not timely filed within the one-year time limitation period under section 10.607(a) of the implementing regulations.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.²

¹ Docket No. 99-2516 (issued November 29, 2000).

² 20 C.F.R. §§ 10.606, 10.607 (1999).

The Board finds that the Office abused its discretion in denying appellant's request for reconsideration under section 8128(a) of the Act on the grounds that the request was not timely filed within the one-year time limitation period under section 10.608(b) of the implementing regulations. Under section 8128(a) of the Act,³ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with section 10.606(b)(2) of the implementing federal regulations.⁴ These regulations also provide that the Office will not review a decision denying or terminating a benefit unless the application is filed within one year of the date of that decision.⁵ The Board has held that the imposition of the one-year time limitation period for filing a request for reconsideration is not an abuse of the discretionary authority granted the Office under section 8128(a) of the Act.⁶

With regard to when the one-year time limitation period begins to run, the Office's procedure manual states:

"The one-year [time limitation] period for requesting reconsideration begins on the date of the original [Office] decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following a reconsideration, any decision by the 'Employees' Compensation Appeals Board, and any *de novo* decision following action by the Board, but does not include prerecoupment hearing/review decisions."⁷

The Board has held that Chapter 2.1602.3(b)(1) of the Office's procedure manual should be interpreted to mean that a right to reconsideration within one year accompanies any subsequent merit decision on the issues, including any merit decision by the Board.⁸

In this case, the last merit decision was issued on November 29, 2000 by the Board. In the March 27, 2001 Office decision, the Office found that appellant's request for reconsideration dated December 28, 2000 was untimely. However, appellant's request for reconsideration, filed on December 28, 2000, was within one year of the November 29, 2000 merit decision by the Board and was timely.

Since the request for reconsideration was timely, the Office must evaluate the requests under the appropriate standard.⁹ The "clear evidence of error" standard utilized in this case is

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b) (1999).

⁵ 20 C.F.R. § 10.607(a).

⁶ See *Jesus D. Sanchez*, 41 ECAB 964, 966 (1990).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602, para. 3b(1) (May 1996).

⁸ See *John W. O'Connor*, 42 ECAB 797 (1991).

⁹ 20 C.F.R. § 10.607(a).

appropriate only for untimely reconsideration requests. Accordingly, the case will be remanded to the Office for proper consideration of appellant's timely request for reconsideration of the November decision. After such further development as it deems necessary, the Office should issue an appropriate decision.

The March 27, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
April 12, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member