

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GWENDOLYN THOMAS and U.S. POSTAL SERVICE,
POST OFFICE, Independence, MO

*Docket No. 01-1513; Submitted on the Record;
Issued January 18, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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.

The Board has duly reviewed the case record in the present appeal and finds that the Office improperly determined that appellant's request for reconsideration was not timely filed.

The only Office decision before the Board on this appeal is the Office's April 26, 2001 decision denying appellant's request for reconsideration. Since more than one year has elapsed between the date of the Office's most recent merit decision on April 12, 2000, affirming the denial of appellant's claim for an emotional condition, and the filing of appellant's appeal on May 4, 2001, the Board lacks jurisdiction to review the merits of appellant's claim.¹

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.² 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).³

In this case, by letter dated April 12, 2001, appellant requested reconsideration of the Office hearing representative's decision dated April 12, 2000. The postmark of appellant's

¹ 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office final decision being appealed.

² 20 C.F.R. § 10.607(a).

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

reconsideration request was not retained in the record. The date stamp indicates that appellant's letter was received on April 16, 2001.

It is well established under the Office's procedures that the timeliness of a reconsideration request is determined by the postmark of the envelope, but if the envelope is not available, the date of the letter itself is used.⁴ Thus, the date of appellant's letter, April 12, 2001, will be used to determine the timeliness of her request. The Board has also held that in computing a time period, the date of the event from which the designated period of time begins to run shall not be included, while the last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday.⁵ As such, the one-year time period for appellant's reconsideration request began to run on the day after the Office's April 12, 2000 merit decision, or April 13, 2000. Since appellant's request for reconsideration was dated April 12, 2001, her 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 April 26, 2001 decision of the Office of Workers' Compensation Programs is hereby remanded for action consistent with this decision of the Board.

Dated, Washington, DC
January 18, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (May 1996).

⁵ See *John B. Montoya*, 43 ECAB 1148 (1992); see also *Marguerite J. Dvorak*, 33 ECAB 1682 (1982).