

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RITA A. DELGADO and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Denver, CO

*Docket No. 01-869; Submitted on the Record;
Issued July 16, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

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

By letter dated August 29, 1991, the Office advised appellant that it had accepted her claim for aggravation of thoracic outlet syndrome on the right side. On May 28, 1993 appellant filed a claim for a schedule award.

On May 13, 1996 the Office issued a schedule award for a 75 percent permanent loss of use of appellant's right arm.

On June 24, 1998 appellant filed a claim for a recurrence of disability. She indicated that she had not stopped work and stated that both sides were affected but only the right side was accepted. By decision dated October 1, 1998, the Office found that the evidence failed to demonstrate that the claimed recurrence was related to appellant's employment.

By letter dated October 9, 1998, appellant requested a hearing, which was held on March 24, 1999.

On March 29, 1999 the Office received a letter dated March 22, 1999 from John S. Evangelisti, Esq., requesting that the Office accept appellant's claim for left thoracic outlet syndrome. Accompanying this letter was a March 16, 1999 appointment by appellant of Mr. Evangelisti to represent her in her claim for "federal workers' compensation benefits."

By decision dated July 1, 1999, an Office hearing representative found that there was no rationalized medical evidence to support an employment-related left thoracic outlet syndrome.

By letter dated October 19, 1999, appellant's attorney requested reconsideration and submitted a medical report. By decision dated October 27, 1999, the Office found that the additional evidence was cumulative and not sufficient to warrant review of its prior decisions.

By letter dated June 30, 2000, sent by facsimile and regular mail, appellant's attorney requested reconsideration and submitted a medical report from a physician not previously involved in the case. The June 30, 2000 letter which was typewritten on Mr. Evangelisti's stationery, was signed "Francis K. Culkin for Mr. Evangelisti."

By letter dated July 24, 2000, Mr. Evangelisti noted that on June 30, 2000 he had requested reconsideration and submitted a new medical report. This letter stated that the June 30, 2000 reconsideration request had the wrong claim number on it, one for appellant's stress claim rather than for her claim for thoracic outlet syndrome.

By decision dated July 26, 2000, the Office found that appellant's request for reconsideration was not filed within the one-year limit and that it did not demonstrate clear evidence of error. Regarding the June 30, 2000 letter, the Office found:

"A review of the letter dated June 30, 2000 requesting reconsideration of some decision, shows that it was not signed by someone on the representative's behalf. The injured worker is entitled to appoint a representative to act on his or her behalf. Only an authorized representative can submit a request for reconsideration."

The only Office decision before the Board on this appeal is the Office's July 26, 2000 decision denying appellant's request for reconsideration on the basis that it was not filed with the one-year time limit set forth by 20 C.F.R. § 10.607(a), and that it did not present clear evidence of error. Since more than one year elapsed between the date of the Office's most recent merit decision on July 1, 1999 and the filing of appellant's appeal on February 13, 2001, the Board lacks jurisdiction to review the merits of appellant's claim.¹

The Board finds that appellant's June 30, 2000 request for reconsideration was timely filed.

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued."

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 final Office decision being appealed.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, 20 C.F.R. § 10.607(a) 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 Board has found that the imposition of this one-year limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).²

Mr. Evangelisti was appointed as appellant’s representative on March 16, 1999. The June 30, 2000 letter requesting reconsideration was signed by an employee or associate on behalf of Mr. Evangelisti, who continued to be appellant’s representative.³ As this letter was on his stationery and indicated it was signed for Mr. Evangelisti, the individual who signed it had apparent authority to act for Mr. Evangelisti. In a July 24, 2000 letter Mr. Evangelisti confirmed that the June 30, 2000 letter was a request for reconsideration. The June 30, 2000 letter constituted a request for reconsideration from appellant’s authorized representative. As this letter was sent within one year of the Office’s July 1, 1999 decision on the merits of appellant’s claim, it was timely under 20 C.F.R. § 10.607(a). The case will therefore be remanded to the Office for a decision regarding whether the evidence submitted with the June 30, 2000 request for reconsideration was sufficient to warrant a review of the merits of appellant’s claim under 20 C.F.R. § 10.606(b).

The July 26, 2000 decision of the Office of Workers’ Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
July 16, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

² *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³ 20 C.F.R. § 10.700(b).