

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS STEPTOE and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 00-2068; Submitted on the Record;
Issued June 3, 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 had filed an untimely request for reconsideration that did not show clear evidence of error.

The Board has duly reviewed the case with respect to the issue in question and finds that the Office improperly determined that appellant's application for review was not timely filed.

The only decision before the Board on appeal is the Office's April 19, 2000 nonmerit decision denying appellant's request for a review on the merits of its decision dated March 23, 1999. Because more than one year has elapsed between the issuance of the Office's March 23, 1999 merit decision and appellant's June 7, 2000 appeal to this Board, the Board lacks jurisdiction to review the prior Office decision.¹

Section 8128(a) of the Federal Employees' Compensation 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 previously awarded; or

(2) award compensation previously refused or discontinued."²

¹ See 20 C.F.R. § 501.3(d)(2).

² 5 U.S.C. § 8128(a).

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 the Office will not review a decision unless the application for review is filed within one year of the date of that decision. The Board notes that the facsimile requesting consideration was filed on March 29, 2000 by Senator Bunning's office, over one year after the March 23, 1999 decision denying appellant's request that his claim be expanded to include injuries to the right ankle, jaw and mental conditions, appellant's petition for reconsideration. In the facsimile, the senator's office explained that, as appellant was deaf, it was difficult to communicate with him, stating that the delay in filing was the fault of the senator's office and requesting that the request for reconsideration be found timely. By letter to appellant's senator dated April 5, 2000, the Office indicated that "Based on the information provided to us by your office's staff, we will consider the request timely." However, in its decision dated April 19, 2000, a different claims examiner denied appellant's request finding it was untimely and failed to establish clear evidence of error. As the earlier claims examiner found that appellant's request for reconsideration was timely in the letter of April 5, 2000, it was error for a different claims examiner to find that appellant's request was untimely without recognizing or explaining away the prior letter regarding timeliness.

The decision of the Office of Workers' Compensation Programs dated April 19, 2000 is hereby set aside and this case is remanded in order for the Office to consider appellant's request under the proper timely standard for filing reconsideration.

Dated, Washington, DC
June 3, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member