

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of Krag Yoshimoto and U.S. Postal Service,
Post Office, Tucson, AZ

*Docket No. 01-1071; Submitted on the Record;
Issued March 21, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request 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.

On October 13, 1996 appellant, then a 35-year-old flat sorter filed a claim alleging that on September 30, 1996 she was lifting a tub of flats and injured her left hand and wrist. The Office accepted appellant's claim for a left hand sprain and left pisiform removal and paid appropriate compensation. She did not stop work.

On April 2, 1997 appellant filed several CA-8 forms, claims for continuing compensation, for the period February 27 to March 28, 1997.

In a decision dated April 21, 1997, the Office denied appellant's claim for wage-loss compensation for the period February 27 to March 28, 1997 on the grounds that the evidence was not sufficient to establish that appellant was unable to perform the modified light-duty position offered to her.

By letter dated April 27, 1997, appellant requested reconsideration of the Office's decision dated April 21, 1997.

In a decision dated March 16, 1998, the Office denied appellant's claim for wage-loss compensation for the period February 27 to March 28, 1997¹ on the grounds that the evidence was not sufficient to establish that appellant was unable to perform the modified light-duty position offered to her.

¹ The Office indicated that appellant received total disability benefits from February 4 to February 27, 1997.

Appellant filed a claim for a schedule award. His case record was referred to the Office's medical adviser who determined that appellant sustained an 18 percent impairment of the left upper extremity. In a decision dated May 12, 1998, the Office granted appellant a schedule award for an 18 percent permanent loss of the left upper extremity.

On May 22, 1998 the employing establishment offered appellant a modified limited-duty position effective June 6, 1998. The position was in conformance with the restrictions set forth by her physician. Appellant accepted this position.

In a decision dated September 14, 1998, the Office determined that appellant's position as of June 6, 1998 fairly and reasonably represented her wage-earning capacity. She was therefore not entitled to wage-loss compensation as her wages met or exceeded the wages of the job he held when injured and, therefore, no loss of wages occurred.

Thereafter, appellant filed several CA-8 forms, claims for continuing compensation, for the following dates: September 19, 1998; October 9 to November 4, 1998; November 5 to December 4, 1998; and December 3, 1998 to January 6, 1999. He also requested to repurchase leave for the following periods: October 9 to November 4, 1998; November 5 to December 4, 1998; and December 3, 1998 to January 6, 1999.

In a letter dated January 2, 1999, appellant requested reconsideration of the Office's decision dated March 16, 1998.

In a decision dated March 15, 1999, the Office vacated the decision dated March 16, 1998 and determined that appellant was due additional compensation for the period February 27 to March 28, 1997. The Office determined that, although there was a job offer extended to appellant, no suitability determination was made with regard to the job offer and, therefore, no sanctions could be invoked for her failure to accept the position.

By merit decision dated December 14, 1999, the Office denied appellant's claim for compensation for the periods September 19, 1998; October 9 to November 4, 1998; November 5 to December 3, 1998; and December 2, 1998 to January 6, 1999 on the grounds that the evidence did not establish that appellant was partially disabled for this period.

By letter dated November 24, 2000, appellant requested reconsideration of the decision dated December 14, 1999. She did not submit any additional evidence.

In a February 3, 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 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 10.138(b)(2) of the implementing regulations.

Appellant is requesting review of the December 14, 1999 Office decision.

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 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 10.607(a)³ of the implementing regulations. Under section 8128(a) of the Act,⁴ 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,⁵ which provides guidelines for the Office in determining whether an application for reconsideration is sufficient to warrant a merit review;⁶ that section also provides 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.⁷ 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.

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 Board and any *de novo* decision following action by the Board, but does not include precoupment hearing/review decisions."⁸

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.⁹

² 20 C.F.R. §§ 10.606; 10.607 (1999).

³ 20 C.F.R. § 10.607(a).

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b) (1999).

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ 20 C.F.R. § 10.607(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602, para. 3b(1) (May 1996).

⁹ *Ranjan V. Vora*, Docket No. 90-1304 (issued December 18, 1990); see *John W. O'Connor*, 42 ECAB 797 (1991).

In this case, the Office issued its last merit decision on December 14, 1999. The February 3, 2001 Office decision found that appellant's request for reconsideration dated November 24, 2000 was untimely. However, appellant's request for reconsideration, filed on November 24, 2000, was within one year of the December 14, 1999 merit decision by the Office and was timely.

The Office has abused its discretion in denying appellant's request for reconsideration under section 8128(a) of the Act by not considering the outstanding timely request for reconsideration.

On remand the Office should treat as timely appellant's November 24, 2000 request for reconsideration, exercise its discretion in determining whether these requests are sufficient to warrant a merit review and issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated February 3, 2001 is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
March 21, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member