

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THERESE JOYCE SANNAR and DEPARTMENT OF VETERANS AFFAIRS,  
WALLA WALLA VETERANS HOSPITAL, Walla Walla, WA

*Docket No. 01-309; Submitted on the Record;  
Issued May 1, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128 on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

The Office accepted that appellant, a nurse, had incurred left sacroiliac strain, temporary aggravation of spondylosis L5-S1, and temporary aggravation of preexisting lumbar degenerative disc disease as a result of her federal employment. By decision dated February 5, 1996, the Office terminated appellant's compensation benefits on the basis that the weight of the medical evidence established that she had fully recovered from the effects of her federal employment injuries. By decision dated June 29, 1999, an Office hearing representative affirmed the previous decision. By letter dated June 29, 2000, and stamped as received on July 5, 2000, appellant's attorney requested reconsideration. Additional evidence was also submitted. By decision dated July 14, 2000, the Office denied appellant's reconsideration request on the grounds that it was untimely filed and she failed to demonstrate clear evidence of error. The instant appeal follows.

The only decision before the Board is the Office's July 14, 2000 decision denying appellant's request for reconsideration of the June 29, 1999 Office decision. Because more than one year had elapsed between the issuance of this decision and October 11, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the June 29, 1999 Office decision.<sup>1</sup>

The Board finds that appellant's June 29, 2000 request for reconsideration was timely filed.

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<sup>1</sup> See 20 C.F.R. § 501.3(d)(2).

Section 8128(a) of the Federal Employees' Compensation Act<sup>2</sup> does not entitle a claimant to a review of an Office decision as a matter of right.<sup>3</sup> This section, vesting the Office with discretionary authority to determine whether it will review an award for or against compensation, provides:

“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.”

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.<sup>4</sup> 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).<sup>5</sup>

In this case, the Office issued a decision on June 29, 1999 and in a letter dated June 29, 2000, which the Office received on July 5, 2000, appellant requested reconsideration. The one-year time limitation begins to run on the date following the date of the original Office decision.<sup>6</sup> A right to reconsideration within one year accompanies any subsequent merit decision on the issues.<sup>7</sup> Thus, the Office erred in finding that the one-year time limitation ran from June 29, 1999 through June 28, 2000 as appellant had from June 30, 1999 through June 29, 2000 in which to timely file a reconsideration request. The Board further notes that, in the Office's procedure manual, Chapter 2.1602.3(b)(1), timeliness for a reconsideration request is determined, not by the date the Office receives the request, but by the postmark on the envelope. The Board notes that the procedure manual states: “Timeliness is thus determined by the postmark on the envelope, if available. *Otherwise, the date of the letter itself should be used.*” (Emphasis added.) The Board notes that the envelope containing the request was not retained in the record, and the letter requesting reconsideration was dated June 29, 2000. For this reason the request was timely. Appellant, thus timely filed her request for reconsideration within one year of the previous merit decision and the Office improperly denied her reconsideration request by applying an improper legal standard reserved for cases where reconsideration is requested more

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<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> See *Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>4</sup> 20 C.F.R. § 10.607.

<sup>5</sup> *Jesus D. Sanchez*, *supra* note 3.

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(a) (May 1991).

<sup>7</sup> *Id.*, *Larry J. Lilton*, 44 ECAB 243 (1992).

than one year later. Since the Office erroneously reviewed the evidence submitted in support of appellant's reconsideration request under the clear evidence of error standard, the Board will remand the case to the Office for review of this evidence under the proper standard of review.<sup>8</sup>

The decision of the Office of Workers' Compensation Programs dated July 14, 2000 is hereby vacated, and the case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, DC  
May 1, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>8</sup> The Board notes that appellant submitted additional evidence with her appeal to the Board. This evidence was submitted subsequent to the July 14, 2000 Office decision and the Board cannot consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).