

On October 1, 2001 appellant alleged that she sustained a recurrence of disability on September 22, 2001 causally related to her August 1, 2000 employment injury.¹

By decision dated March 4, 2002, the Office denied appellant's September 22, 2001 recurrence of disability on the grounds that the evidence of record did not establish that the recurrence of disability was causally related to her August 1, 2000 employment injury. A copy of the Office's decision was sent to appellant's correct address of record.²

In an undated letter received by the Office on October 24, 2003, appellant requested reconsideration and submitted additional evidence.³

By decision dated December 8, 2003, the Office denied appellant's request for reconsideration on the grounds that her request was not timely made within one year of the March 4, 2002 decision and failed to show clear evidence of error.

LEGAL PRECEDENT

The Board's jurisdiction to consider and decide appeals from final Office decisions extends only to those final decisions issued within one year prior to the filing of the appeal.⁴ As appellant filed her appeal with the Board on January 20, 2004 the only decision properly before the Board is the Office's December 8, 2003 decision denying her request for reconsideration.⁵

Section 8128(a) of the Federal Employees' Compensation Act⁶ does not entitle a claimant to a review of an Office decision as a matter of right.⁷ This section vests the Office with

¹ In a form filed October 1, 2002, appellant alleged a second recurrence of disability on September 30, 2002. The Office sent him a December 3, 2003 letter requesting additional evidence regarding the September 30, 2002 recurrence of disability. However, there is no final Office decision of record regarding a recurrence of disability on September 30, 2002. The Board has jurisdiction to consider and decide appeals only from final decisions of the Office issued within one year prior to the filing of the appeal. 20 C.F.R. § 501.2(c). Therefore, the issue of the September 30, 2002 recurrence of disability is not within the Board's jurisdiction.

² A memorandum in the case record indicates that on October 15, 2003 appellant telephoned the Office to request a copy of the Office's March 4, 2002 decision, that she stated that she never received. On October 16, 2003 the Office mailed another copy of the March 4, 2002 decision to the new address provided by appellant.

³ Appellant indicated in her letter, that she was requesting reconsideration of a denial of her second recurrence of disability on September 30, 2002. However, as noted above, the only final Office decision in this case is the March 4, 2002 decision denying the first recurrence of disability on September 22, 2001.

⁴ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

⁵ *Algimantas Bumelis*, 48 ECAB 679 (1997).

⁶ 5 U.S.C. § 8128(a).

⁷ *Gregory Griffin*, 41 ECAB 186 (1989), *petition. for recon. denied*, 41 ECAB 458 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

discretionary authority to determine whether it will review an award for or against compensation.⁸

The Office, through regulation, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁹ The Office will not review a decision denying or terminating compensation benefits unless the application for review is filed within one year of the date of that decision.¹⁰ When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.¹¹

ANALYSIS

In this case, the Office denied appellant's October 24, 2003 request for reconsideration on the grounds that the request was not timely filed within one year of its March 4, 2002 decision. The record indicates that the Office mailed a copy of the March 4, 2002 decision to appellant's correct address of record. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by the individual.¹² This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.¹³ The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of the Office itself, will raise the presumption that the original was received by the addressee.¹⁴

The record shows that the Office mailed its March 4, 2002 decision to appellant's last known address. There is no evidence that appellant notified the Office of any change in her address. A presumption of receipt, therefore, arises in this case.¹⁵ Accordingly, the Office's March 4, 2002 decision was properly issued on that date and appellant's October 24, 2003 request for reconsideration was not timely filed within one year of that decision.

In support of her untimely request for reconsideration of the Office's March 4, 2002 decision, appellant submitted numerous medical reports concerning her claim for an injury on September 30, 2002. This evidence is not relevant to the issue of whether she sustained a recurrence of disability on September 22, 2001 causally related to her August 1, 2000

⁸ *Leon D. Faidley, Jr.*, *supra* note 7.

⁹ 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.607(a).

¹¹ 20 C.F.R. § 10.607(b).

¹² *George F. Gidicsin*, 36 ECAB 175 (1984), (when the Office sends a letter of notice to a claimant, it must be presumed, absent any other evidence, that the claimant received the notice).

¹³ *Michelle Lagana*, 52 ECAB 187 (2000).

¹⁴ *See Larry L. Hill*, 42 ECAB 596 (1991).

¹⁵ *Cresenciano Martinez*, 51 ECAB 322 (2000).

employment injury and does not show clear evidence of error in the Office's March 4, 2002 decision.

Appellant also submitted duty status reports dated October 2 through November 22, 2002, from a family practitioner and Dr. Clarence E. Henke, who indicated that she had certain work restrictions. These reports do not address the issue of causal relationship between appellant's claimed recurrence of disability on September 22, 2001 and her August 1, 2000 employment injury and do not show clear evidence of error in the Office's March 4, 2002 decision.

In a narrative report dated October 4, 2002, Dr. Henke noted that appellant's recent computer work had caused pain in her wrists and left forearm. However, he did not mention the September 22, 2001 date for which appellant claimed a recurrence of disability nor did he explain how her upper extremity problems in 2002, were causally related to her August 1, 2000 employment injury. Therefore, this report does not show clear evidence of error in the Office's March 4, 2002 decision.

On appeal, appellant states that her October 24, 2003 letter to the Office was a request for reconsideration of a denial of her alleged September 30, 2002 recurrence of disability. However, as noted above, the Office has not yet issued a final decision on this issue and, therefore, it is not before the Board in this appeal.

CONCLUSION

The Board finds that appellant's untimely request for reconsideration failed to show clear evidence of error in the Office's March 4, 2002 decision. On remand after such development as it deems necessary, the Office should issue a final decision regarding appellant's claim for a September 30, 2002 recurrence of disability.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 8, 2003 is affirmed.

Issued: July 2, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member