

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**TAMMY L. MEEHAN, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Southeastern, PA, Employer**

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**Docket No. 04-990  
Issued: May 9, 2005**

*Appearances:*  
*Tammy L. Meehan, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member

**JURISDICTION**

On March 4, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' nonmerit decision dated February 24, 2004, which denied her request for reconsideration on the grounds that it was not timely filed and failed to establish clear evidence of error. Because more than one year has elapsed from the last merit decision dated November 21, 2001 and issued by the Board<sup>1</sup> to the filing of this appeal on March 4, 2004, the Board lacks jurisdiction to review the merits of her claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

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<sup>1</sup> According to Office procedure, the one-year period for requesting reconsideration begins on the date of the original Office decision, but that right to reconsideration within one year also accompanies any subsequent merit decision on the issues, including any merit decision by the Board. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3b (June 2002).

## ISSUE

The issue is whether the Office properly refused to reopen appellant's case for reconsideration of the merits of her claim on the grounds that it was untimely filed and failed to show clear evidence of error.

## FACTUAL HISTORY

This is the second appeal in this case. In its November 21, 2001 decision,<sup>2</sup> the Board noted that the Office had accepted appellant's October 28, 1992 claim for bilateral carpal tunnel syndrome and bilateral surgical releases. The Board further found that she had no more than 10 percent impairment of each of her upper extremities due to this accepted condition. The Board concluded that the medical evidence failed to establish any preexisting or employment-related conditions of the cervical spine,<sup>3</sup> shoulders and elbows and that, therefore, these members were not included in appellant's permanent impairment rating for schedule award purposes. The Board found that the July 27, 1998 decision of the hearing representative finalized July 29, 1998 is in accordance with the facts and the law in the case and adopted the findings and conclusions of the hearing representative. The facts and circumstances of the case as set forth in the Board's prior decision are adopted herein by reference.<sup>4</sup>

Appellant requested reconsideration of the July 27, 1998 decision by the hearing representative on January 11, 2002 and submitted documentation. She mailed this request to the building at which her oral hearing was held, William J. Greene Federal Building, 600 Arch Street, Room 6306, Philadelphia, Pennsylvania, but also provided a copy of this request to her claims examiner. The Office received this letter on January 18, 2002. On the same date the Office received a letter dated January 14, 2002, in which appellant requested that her additional medical conditions be added to her existing claim. She also referenced her January 11, 2002 request for reconsideration and noted that this request was enclosed. The Office responded to the January 14, 2002 letter on February 21, 2002 and suggested that, if appellant felt that she had other disabling conditions she should file a new occupational disease claim form. The Office did not address her timely request for reconsideration.

Appellant requested aid in developing her claim from her congressman on February 6, 2002.

On February 13, 2002 appellant filed an additional occupational disease claim alleging that on October 18, 1991 she became aware of her additional conditions of bilateral brachial plexopathy, bilateral radial neuropathy and bilateral ulnar nerve neuropathy, which she attributed to her federal job duties. She submitted additional evidence and the Office developed this claim

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<sup>2</sup> Docket No. 99-1462 (issued November 21, 2001).

<sup>3</sup> Neither the Federal Employees' Compensation Act, nor its implementing federal regulations provide for a schedule award for impairment to the back or to the body as a whole. *Jesse Mendoza*, 54 ECAB \_\_\_\_ (Docket No. 03-1516, issued September 10, 2003).

<sup>4</sup> The Board's November 21, 2001 decision also found that the Office's May 6, 1999 decision was null and void for lack of jurisdiction on the part of the Office at the time of issuance.

under a separate claim number. By decision dated March 11, 2003, an Office hearing representative denied this claim as untimely.

Appellant requested a schedule award on April 23, 2003. In a letter dated August 20, 2003, the Office referred her to the Board's November 21, 2001 decision addressing her permanent impairment and entitlement to a schedule award.<sup>5</sup>

Appellant again requested reconsideration on November 26, 2003 and addressed this request to the Office. She submitted additional new medical evidence in support of her request.

By decision dated February 24, 2004, the Office declined to reopen appellant's claim for consideration of the merits on the grounds that her request for reconsideration was not timely filed and did not contain clear evidence of error.

### **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation Act<sup>6</sup> does not entitle a claimant to a review of an Office decision as a matter of right.<sup>7</sup> This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.<sup>8</sup> The Office, through regulations has imposed limitations on the exercise of its discretionary authority. One such limitation is that the Office 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>9</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>10</sup>

In those cases where requests for reconsideration are not timely filed, the Office must nevertheless undertake a limited review of the case to determine whether there is clear evidence of error pursuant to the untimely request in accordance with section 10.607(b) of its regulations.<sup>11</sup>

### **ANALYSIS**

By letter dated January 11, 2002, appellant requested reconsideration of the Office hearing representative's decision dated July 29, 1998 and submitted a copy of this request to the

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<sup>5</sup> The Office did not issue a final decision regarding appellant's claim for an additional schedule award. Therefore, the Board will not address this issue for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

<sup>6</sup> 5 U.S.C. § 8128(a).

<sup>7</sup> *Thankamma Mathews*, 44 ECAB 765, 768 (1993).

<sup>8</sup> *Id.* at 768; *see also Jesus D. Sanchez*, 41 ECAB 964, 966 (1990).

<sup>9</sup> 20 C.F.R. §§ 10.607; 10.608(b). The Board has concurred in the Office's limitation of its discretionary authority; *see Gregory Griffin*, 41 ECAB 186 (1989); *petition for recon. denied*, 41 ECAB 458 (1990).

<sup>10</sup> 5 U.S.C. § 10.607(b); *Thankamma Mathews*, *supra* note 7 at 769; *Jesus D. Sanchez*, *supra* note 8 at 967.

<sup>11</sup> *Thankamma Mathews*, *supra* note 7 at 770.

Office. The Board issued a merit decision regarding her claim on November 21, 2001.<sup>12</sup> The Board finds that appellant's January 11, 2002 request for reconsideration was within one year of the Board's November 21, 2001 decision and was, therefore, timely.

Since appellant's request for reconsideration was timely, the Office must evaluate the request under the appropriate standard.<sup>13</sup> The "clear evidence of error" standard utilized in this case is appropriate only for untimely reconsideration requests. Accordingly, the case will be remanded to the Office for proper consideration of appellant's timely request for reconsideration. After such further development as it deems necessary, the Office should issue an appropriate decision.

### **CONCLUSION**

The Board finds that appellant had previously made a timely request for reconsideration. As such, the Office must evaluate her request for reconsideration under the appropriate standard and issue a new decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 24, 2004 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: May 9, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

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<sup>12</sup> See *supra* note 1.

<sup>13</sup> *Algimantas Bumelis*, 48 ECAB 679, 681 (1997).