



related back condition had resolved by January 3, 1999. The history of the case is provided in the Board's decision and is incorporated herein by reference.

By merit decisions dated February 9 and September 2, 2004 and May 12, 2006, the Office denied modification of its prior decisions. On January 19, 2007 it received a January 5, 2007 report from Dr. Daniel Ignacio, a psychiatrist, and a December 7, 2006 report from Dr. Paul Mitchell, Jr., a neurosurgeon. On the December 7, 2006 report, below Dr. Mitchell's name, appellant had written "I am requesting reconsideration," noted her OWCP file number and included her signature. A memorandum of telephone call (Form CA-110) dated February 1, 2007 indicated that appellant had inquired as to the status of her reconsideration, and was told she needed to follow her appeal rights in the 2006 decision. A CA-110 dated May 2, 2007 indicated that appellant was advised that the Office had not received a request for reconsideration. On May 16, 2007 the Office received additional medical evidence.

By letter postmarked September 24, 2007, appellant requested reconsideration of her claim. In a decision dated October 3, 2007, the Office found appellant's application for reconsideration was untimely. It stated the application "was devoid of statement(s) and evidence" and was insufficient to establish clear evidence of error.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."<sup>2</sup> The application for reconsideration must be in writing.<sup>3</sup>

Section 8128(a) of the Act<sup>4</sup> does not entitle a claimant to a review of an Office decision as a matter of right.<sup>5</sup> This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.<sup>6</sup> The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a).<sup>7</sup> As one such limitation, the Office has stated that it will not review a decision denying or

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<sup>2</sup> 20 C.F.R. § 10.605 (1999).

<sup>3</sup> 20 C.F.R. § 10.606(b)(1).

<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>6</sup> Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application."

<sup>7</sup> Thus, although it is a matter of discretion on the part of the Office whether to review an award for or against payment of compensation, the Office has stated that a claimant may obtain review of the merits of a claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office; *see* 20 C.F.R. § 10.606(b)(2).

terminating a benefit unless the application for reconsideration is filed within one year of the date of that decision.<sup>8</sup> The Board has found that the imposition of this one-year limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).<sup>9</sup>

### ANALYSIS

The Office determined that appellant's application for reconsideration was filed September 21, 2007, the postmark date of a letter received by the Office on September 26, 2007. On January 19, 2007, however, it had received evidence that included medical evidence and a written statement from appellant that she was requesting reconsideration of her claim. Appellant clearly stated that she was requesting reconsideration and she identified the OWCP file number for this claim. This is sufficient to constitute an application for reconsideration.<sup>10</sup>

Therefore the application for reconsideration was filed as of January 19, 2007. Since this is within one year of the merit decision dated May 12, 2006, appellant has filed a timely application for reconsideration. The case will be remanded to the Office to properly determine whether the timely application for reconsideration was sufficient to warrant merit review of the claim under 20 C.F.R. § 10.606(b)(2).

### CONCLUSION

Appellant filed a timely application for reconsideration on January 19, 2007 and the case is remanded for proper adjudication of the timely application for reconsideration.

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<sup>8</sup> 20 C.F.R. § 10.607(a).

<sup>9</sup> See *Leon D. Faidley, Jr.*, *supra* note 5.

<sup>10</sup> See, e.g., *Jack D. Johnson*, 57 ECAB 593 (2006) (a claimant's letter to the Office identifying the OWCP file number, advising the Office he was enclosing pertinent information to his claim and submitting new evidence was sufficient to constitute an application for reconsideration).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 3, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 1, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board