U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HUNTER TIMMONS and DEPARTMENT OF THE ARMY, McALESTER ARMY AMMUNITION PLANT, McAlester, Okla.

Docket No. 96-1448; Submitted on the Record;
Issued March 16, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's June 1, 1995 request for reconsideration.

In a decision dated June 21, 1995, the Office denied appellant's June 1, 1995 request for reconsideration on the grounds that it was untimely filed and failed to show clear evidence of error.

The Board has duly reviewed the record on appeal and finds that the Office properly denied appellant's request for reconsideration.

Section 8128(a) of the Federal Employees' Compensation Act does not grant a claimant the right to a merit review of his case.[1] Rather, this section vests the Office with discretionary authority to review prior decisions:

> "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 --
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> (1) end, decrease, or increase the compensation awarded; or
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> (2) award compensation previously refused or discontinued."[2]

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[1] *Gregory Griffin*, 41 ECAB 186 (1989); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989). Compare 5 U.S.C. § 8124(b)(1), which entitles a claimant to a hearing before an Office hearing representative as a matter of right provided that the request for a hearing is made within 30 days of a final Office decision and is made before review under 5 U.S.C. § 8128(a).

[2] 5 U.S.C. § 8128(a).

The Office, through 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.[3] 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).[4]

The latest merit decision issued in this case was the Office's decision of January 6, 1994, which terminated appellant's compensation on the grounds that the weight of the medical opinion evidence established that appellant had no continuing residuals of his September 13, 1993 employment injury. In an attached statement of review rights, the Office notified appellant that if he had additional evidence that he believed was pertinent, he could request in writing that the Office reconsider the decision. The Office also notified appellant that such a request must be made within one year of the date of the decision. Because appellant made his June 1, 1995 request, for reconsideration more than one year after the date of the Office's January 6, 1994 decision on the merits of his claim, the Office properly found appellant's request to be untimely filed.

The Board has held that a claimant has the right to secure review of an Office decision upon presentation of new evidence that the decision was erroneous.[5] Office procedures state that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.138(b)(2), if the claimant's application for review shows "clear evidence of error" on the part of the Office.

The Board finds that appellant's June 1, 1995 request for reconsideration fails to show clear evidence of error. In its January 6, 1994 decision, the Office terminated compensation because the weight of the medical opinion evidence established that he had no continuing residuals of the September 13, 1993 employment injury. The issue, therefore, was one of medical opinion evidence. With his untimely request for reconsideration, which the Board has reviewed, appellant submitted no medical opinion evidence.[6] With his reconsideration request, appellant failed to support his request with medical opinion evidence sufficient to shift the weight of the evidence in his favor. Because nothing in appellant's narrative establishes that the Office's findings were clearly erroneous, the Board will affirm the denial of appellant's request.

[3] 20 C.F.R. § 10.138(b)(2).

[4] *See* cases cited *supra* note 1.

[5] *Leonard E. Redway*, 28 ECAB 242, 246 (1977).

[6] The memorandum attached to the Office's January 6, 1994 decision explains that appellant's attending physician failed to provide a medically-reasoned explanation of how the incident of September 13, 1993, which caused a contusion, disabled appellant for all work and necessitated surgery. An Office referral physician reported that there was no medical basis to conclude that the incident materially worsened appellant's right knee condition and that there were no objective findings to support continuing injury-related disability. The Office found that the weight of the evidence rested with the report of the Office referral physician.

The June 21, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
March 16, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member