

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of KATHLEEN M. VITZTHUM and U.S. POSTAL SERVICE,
POST OFFICE, Bellmore, NY

*Docket No. 99-1514; Submitted on the Record;
Issued December 20, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the grounds that the request was untimely and failed to show clear evidence of error.

On June 2, 1997 appellant, then a 38-year-old letter carrier, filed an occupational disease claim alleging that she sustained an emotional condition causally related to factors of her employment. By decision dated December 9, 1997, the Office denied appellant's claim on the grounds that the evidence of record failed to establish any compensable factors of employment.

By letter dated February 8, 1999, appellant requested reconsideration of the denial of her claim and submitted additional evidence.

Appellant submitted a copy of an arbitration decision regarding appellant's grievance against the employing establishment. In this decision, the arbitrator found that the actions of appellant's supervisor on April 11, 1997 when he discussed appellant's job performance with other employees, was improper and instructed the employing establishment to pay appellant compensation benefits for time lost from work between April 11 and August 4, 1997.

Appellant also submitted a report dated April 21, 1997 from Mr. Ted Dubinsky, a clinical social worker.¹

By decision dated March 25, 1999, the Office found that appellant's request for reconsideration was not timely filed within one year of the Office's December 9, 1997 decision and, therefore, the request was denied as untimely. The Office stated that it had reviewed the evidence submitted in support of her reconsideration request and found that it did not show clear evidence of error in the Office's December 9, 1997 decision. The Office indicated that the

¹ This report was previously of record.

evidence submitted established error or abuse by the employing establishment, the April 11, 1997 incident addressed in the arbitration decision, but the medical evidence submitted did not support that appellant sustained an emotional condition as a result of this compensable factor of employment and, therefore, appellant had not established clear evidence of error on the part of the Office in its December 9, 1997 decision denying her claim.²

The Board finds that the Office properly determined that appellant's application for review was not timely filed and failed to present clear evidence of error.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.³ As appellant filed her appeal with the Board on April 29, 1999, the only decision properly before the Board is the Office's March 25, 1999 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's December 9, 1997 decision denying her claim for an emotional condition.⁴

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁵ 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.⁶ 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.⁷

Since more than one year elapsed from the December 9, 1997 decision, denying appellant's claim for an emotional condition to her February 8, 1999 request for reconsideration, her request for reconsideration was untimely.

The evidence submitted with appellant's untimely request for reconsideration does not show clear evidence of error in the Office's December 9, 1997 decision. The evidence does not raise a substantial question as to the correctness of the Office's last merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in appellant's favor.

Appellant submitted evidence regarding a work incident on April 11, 1997 which the Office accepted as a compensable factor of employment. However, appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise

² The Board notes that appellant submitted additional evidence with her appeal. The Board has no jurisdiction to consider this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

³ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

⁴ *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.138(b)(2). *Gregory Griffin*, 41 ECAB 186, 198 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

⁷ *Thankamma Mathews*, 44 ECAB 765, 769-70 (1993); *Jesus D. Sanchez*, 41 ECAB 964, 967 (1990).

to a compensable disability under the Federal Employees' Compensation Act. Appellant must also submit rationalized medical evidence establishing that her claimed emotional condition is causally related to an accepted compensable employment factor.⁸

The medical evidence submitted with appellant's untimely request for reconsideration does not establish that the incident on April 11, 1997 when her supervisor discussed her job performance with other employees caused or aggravated her emotional condition. The April 21, 1997 report from Mr. Dubinsky, a clinical social worker, is not probative on the issue of causal relationship. Lay individuals such as physician's assistants, nurse practitioners and social workers are not competent to render a medical opinion.⁹ The only medical evidence of record from a physician is a July 1, 1997 report from Dr. Mews Rousseau, a psychiatrist, who related that appellant was depressed due to work stress but no specific work incidents were mentioned in the report. As Dr. Rousseau did not attribute appellant's emotional condition to the factor of employment found by the Office to be compensable, the incident on April 11, 1997, appellant has not shown clear evidence of error in the Office's December 9, 1997 denial of her claim.

The March 25, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 20, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁸ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁹ *See Robert J. Krstyen*, 44 ECAB 227, 229 (1992).