

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT A. La CIVITA and U.S. POSTAL SERVICE,
POST OFFICE, Providence, RI

*Docket No. 00-54; Submitted on the Record;
Issued October 18, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

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

In a decision dated October 26, 1995, the Office denied appellant's occupational disease claim for compensation on the grounds that the evidence failed to establish fact of injury. The Office found that there was insufficient or conflicting evidence on whether the claimed events, incidents or exposures occurred at the times, places and in the manners alleged. Although appellant alleged that the condition began on April 20, 1995, he failed to identify what happened on that date. Although he alleged that he was harassed repeatedly, he failed to identify any incident or events. His allegations of deadlines, rush jobs and loudness of the bundle sorter remained unsupported. The Office also found that the evidence of record failed to support a medical condition resulting from the alleged work incidents or exposures. Submitted progress notes made no reference to any of the implicated incidents, and there was no reasoned medical opinion on how federal employment caused appellant's condition.

In an undated letter received by the Office, on February 23, 1999, appellant requested reconsideration. In support thereof, he submitted a plethora of material. On May 14, 1999 the Office received additional material.

In a decision dated May 21, 1999, the Office denied appellant's request for reconsideration on the grounds that it was untimely and failed to present clear evidence that the Office's October 26, 1995 decision was erroneous.

The Board finds that the Office properly denied appellant's request for reconsideration on the grounds that it was untimely field and failed to present clear evidence of error.

Section 10.607 of the Code of Federal Regulations provides that an application for reconsideration must be sent within one year of the date of the Office decision for which review is sought. The Office will consider an untimely application only if the application demonstrates clear evidence of error on the part of the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.¹

Appellant did not send his undated request for reconsideration within one year of the Office's October 26, 1995 decision denying his claim. The Office received his request on February 23, 1999, and the inclusion of medical documents dated February 8, 1999 shows that appellant did not make his request in a timely manner.

The question, therefore, is whether appellant's request establishes on its face that the Office's October 26, 1995 decision was erroneous. The Board has reviewed the voluminous material submitted by appellant in support of his request and finds that he has not established clear evidence of error. Appellant again made general allegations of harassment, false statements and problems at work without specifying any particular incident or event. Although he submitted an abundance of medical documents, he did not submit a well-reasoned medical opinion explaining how specific incidents at work caused or aggravated his diagnosed emotional condition. The Office noted these same deficiencies in its October 26, 1995 decision. Appellant's untimely request for reconsideration does not cure these deficiencies and fails to establish that the Office's October 26, 1995 decision was erroneous.

The May 21, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 18, 2000

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

¹ 20 C.F.R. § 10.607.