U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STACY D. JACKSON and U.S. POSTAL SERVICE,
WOODLAWN POST OFFICE, Birmingham, AL

Docket No. 00-1906; Submitted on the Record;
Issued April 24, 2001

DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration dated February 23, 2000 was not timely filed and failed to present clear evidence of error.

On December 30, 1997 appellant, then a 25-year-old letter carrier, filed a traumatic injury claim, alleging that on October 30, 1997 while walking up a hill she slipped and twisted her right knee. Appellant stopped work at this time and did not return.[1]

In support of the claim appellant submitted emergency treatment notes dated October 30, 1997 and medical evidence from Dr. Michael Geer, a Board-certified internist and Dr. Andrew Cordover, a Board-certified orthopedic surgeon. The emergency room notes recommended that appellant modify her work activities by reducing her walking activities, but did not indicate the type of injury appellant sustained. Dr. Geer treated appellant on November 19, 1997 and recommended light duty with limited walking. Dr. Cordover noted that appellant was scheduled for surgery on November 25, 1997. On December 3, 1997 he indicated that appellant was to remain off work for the following two weeks. Appellant underwent right knee surgery in early December.

The employing establishment controvered appellant's claim, indicating that her torn cartilage injury occurred prior to her employment and that her injury was not the result of an on-the-job accident

By letter dated January 16, 1998, the Office requested that appellant submit additional factual and medical evidence to support her claim and afforded her 30 days within which to do

[1] Appellant's supervisor indicated on the CA-1 that appellant was terminated from federal employment on December 16, 1997 due to excessive unauthorized absences.

so. The Office specifically asked appellant to address the delay in filing a claim after the alleged injury.

In response, appellant submitted progress notes from Dr. Cordover, who indicated that appellant began having right knee pain approximately four weeks prior to November 21, 1997. Dr. Cordover diagnosed a right medial meniscus tear and noted that appellant underwent surgery to repair the tear.

A January 21, 1998 letter from Dr. Geer indicated that appellant was first treated on November 19, 1997 for knee pain, which she had had for approximately one month. Dr. Geer related that appellant believed that walking her mail route had exacerbated this problem. He indicated that appellant never complained of knee pain prior to November 19, 1997.

Appellant explained that she did not file her claim earlier because she lacked guidance from her supervisor on the proper filing procedures. She indicated that she informed two fellow employees on October 30, 1997 that she sustained an injury while in the performance of duty.

In a decision dated March 6, 1998, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that appellant sustained an injury as alleged.

By letter dated February 23, 2000, appellant requested reconsideration of the Office decision dated March 6, 1998. She did not submit additional evidence.

By decision dated March 16, 2000, the Office denied appellant's application for reconsideration on the grounds that the request was not timely and did not demonstrate clear evidence of error by the Office.

The only decision before the Board on this appeal is that of the Office dated March 16, 2000. Since more than one year elapsed from the date of issuance of the Office's March 6, 1998 merit decision to the date of the filing of appellant's appeal, April 7, 2000, the Board lacks jurisdiction to review the merit decision.[2]

The Board finds that the Office properly determined that appellant's request for reconsideration dated February 23, 2000 was untimely filed and did not demonstrate clear evidence of error.

[2] *See* 20 C.F.R. § 501.3(d).

Section 8128(a) of the Federal Employees Compensation Act[3] vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "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
>
> (2) award compensation previously refused or discontinued."[4]

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, 20 C.F.R. § 10.607(a) provides that the Office will not review a decision unless the application for review is filed within one year of the date of that decision.[5]

In its March 16, 2000 decision, the Office properly determined that appellant failed to file a timely application for review. The Office issued its last merit decision on March 6, 1998 and appellant's request for reconsideration was dated February 23, 2000, which was more than one year after March 6, 1998. Accordingly, appellant's petition for reconsideration was not timely filed.

However, the Office will reopen a claimant's case for merit review, not withstanding the one-year filing limitation, if the claimant's application for review shows clear evidence of error on the part of the Office in its most recent merit decision. To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by the Office. The evidence must be positive, precise and explicit and must manifest on its face that the Office committed an error.[6]

To show clear evidence of error, the evidence submitted must be not only of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but of sufficient probative value to *prima facie* shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of the Office's decision.[7]

Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.[8] It is not enough merely to

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[3] 5 U.S.C. § 8101; § 8128(a).

[4] 5 U.S.C. § 8128(a).

[5] 20 C.F.R. § 10.607(b); *Annie L Billingsley*, 50 ECAB ___ (Docket No. 96-2547, issued December 24, 1998).

[6] 20 C.F.R. § 10.607(b); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

[7] *Annie L Billingsley*, *supra* note 5.

[8] *Jimmy L. Day*, 48 ECAB 652 (1997).

show that the evidence could be construed so as to produce a contrary conclusion.[9] The Board makes an independent determination as to whether a claimant has submitted clear evidence of error on the part of the Office such that the Office abused its discretion in denying a merit review in the face of such evidence.[10]

Inasmuch as appellant did not submit any evidence with her reconsideration request, she has failed to establish clear evidence of error in this case. She stated that she was a hard worker and sustained a serious knee injury. Appellant noted that she was not treated fairly. These statements do not establish clear evidence of error because they do not raise a substantial question as to the correctness of the Office's most recent merit decision and they are insufficient to *prima facie* shift the weight of the evidence in favor of appellant's claim.[11] Appellant submitted no new medical evidence to support her contentions.[12]

The March 16, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 24, 2001

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[9] *Id.*

[10] *Cresenciano Martinez*, 51 ECAB ___ (Docket No. 98-1743, issued February 2, 2000); *Thankamma Mathews*, 44 ECAB 765,770 (1993).

[11] *See Jesus D. Sanchez*, 41 ECAB 964 (1990).

[12] With her request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).