U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LILLIAN RUFFINI and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Wilmington, DE

Docket No. 00-2489; Submitted on the Record;
Issued July 26, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's July 11, 2000 request for reconsideration on the grounds that it was untimely and failed to show clear evidence of error.

In a decision dated July 31, 1998, the Office terminated appellant's compensation benefits effective August 16, 1998 on the grounds that her injury-related disability ceased no later than that date.

In a letter dated July 11, 2000, appellant requested reconsideration. Appellant contended that her Lucopenia condition developed as a result of her accepted hepatitis condition and requested the opportunity to produce medical documentation to establish this.

In a decision dated August 1, 2000, the Office denied appellant's request for reconsideration on the grounds that it was untimely and failed to show clear evidence of error.

The Board finds that the Office properly denied appellant's July 11, 2000 request for reconsideration.

Section 8128(a) of the Federal Employees' Compensation Act 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 --
>
> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."[1]

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 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.[2]

To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by the Office.[3] The evidence must be positive, precise and explicit and must manifest on its face that the Office committed an error.[4] Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.[5] It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.[6] This entails a limited review by the Office of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of the Office.[7] To show clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must be 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 decision.[8] The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the

[1] 5 U.S.C. § 8128(a).

[2] 20 C.F.R. § 10.607.

[3] *See Dean D. Beets*, 43 ECAB 1153 (1992).

[4] *See Leona N. Travis*, 43 ECAB 227 (1991).

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

[6] *See Leona N. Travis, supra* note 4.

[7] *Nelson T. Thompson*, 43 ECAB 919 (1992).

[8] *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

part of the Office such that the Office abused its discretion in denying a merit review in the face of such evidence.[9]

Because appellant failed to send her request for reconsideration within one year of the Office's July 31, 1998 decision to terminate benefits, her request is untimely. Further, appellant's July 11, 2000 request for reconsideration does not establish on its face that the Office's July 31, 1998 decision was erroneous. Appellant has submitted only a lay assertion that she suffers from a medical condition that developed from her employment-related hepatitis condition. This is a medical issue that can be addressed only by reasoned medical opinion evidence, evidence so convincing that it clearly establishes that the Office committed an error in terminating compensation. Appellant's lay opinion on this medical issue has no evidentiary value and does not establish that the Office's termination of benefits was clearly erroneous.

The August 1, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
July 26, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[9] *Gregory Griffin*, 41 ECAB 458, 466 (1990).