United States Department of Labor
Employees' Compensation Appeals Board

F.L., Appellant	)	
and	)	**Docket No. 07-118**
	)	**Issued: March 27, 2007**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Palo Alto, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 18, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 24, 2006 nonmerit decision denying her request for further review of the merits of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The last merit decision of record was the October 29, 2002 decision denying her emotional condition claim. Because more than one year has elapsed between the last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.[1]

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of her claim on the grounds that her request was untimely filed and failed to demonstrate clear evidence of error.

[1] *See* 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

FACTUAL HISTORY

This case has previously been appealed to the Board. By decision dated April 12, 2006,[2] the Board affirmed the Office's refusal to reopen appellant's case for further review of the merits. The Board found that the Office properly determined that appellant's October 2005 reconsideration request was untimely filed and failed to demonstrate clear evidence of error in the Office's denial of her emotional condition claim.

Appellant filed her claim on August 9, 2001, when she was a 40-year-old vocational nurse. She alleged that she sustained depression, panic attacks and chest pains due to work-related stress. Appellant claimed that her supervisor failed to give her proper job descriptions, mishandled her work assignments, wrongly stopped her pay for being absent without leave, refused to retrain her after she returned to work following an injury and improperly changed her job duties on several occasions. She asserted that, several members of her supervisor's staff stood outside her office and yelled her name, unreasonably monitored her movements in the workplace, listened in on her telephone calls and prevented her from getting adequate computer training. Appellant claimed that other staff members sexually harassed her, called her offensive names, burst into her office without knocking, falsely accused her of stealing a vaccination and tampered with her telephone. In decisions dated February 28 and October 29, 2002, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. In an October 27, 2005 decision, the Office denied appellant's request for further merit review of her claim on the grounds that her request was untimely filed and failed to demonstrate clear evidence of error. The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

In a May 15, 2006 letter, received by the Office on June 12, 2006, appellant requested reconsideration of her claim. She claimed that the Office erred when it determined that she had not established any compensable employment factors. Appellant indicated that she had submitted numerous documents, including records of complaints and grievances and medical reports, which she felt had established her claim. She asserted that she was never "put out of harm's way" and that she was forced to work beyond her medical restrictions.

By decision dated August 24, 2006, the Office denied appellant's request for further review of the merits of her claim on the grounds that her request was untimely filed and failed to demonstrate clear evidence of error.

[2] Docket No. 06-329 (issued April 12, 2006).

LEGAL PRECEDENT

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must file her application for review within one year of the date of that decision.[3] The Board has found that the imposition of the one-year limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a) of the Federal Employees' Compensation Act.[4]

The Office, however, may not deny an application for review solely on the grounds that the application was not timely filed. When an application for review is not timely filed, the Office must nevertheless undertake a limited review to determine whether the application establishes "clear evidence of error."[5] Office regulations and procedure provide 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. § 10.607(a), if the claimant's application for review shows "clear evidence of error" on the part of the Office.[6]

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.[7] The evidence must be positive, precise and explicit and must manifest on its face that the Office committed an error.[8] Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.[9] It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.[10] 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.[11] 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

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[3] 20 C.F.R. § 10.607(a).

[4] 5 U.S.C. § 2128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

[5] *See* 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

[6] 20 C.F.R. § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3d (January 2004). Office procedure further provides, "The term 'clear evidence of error' is intended to represent a difficult standard. The claimant must present evidence which on its face shows that the [Office] made an error (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error." *Id.* at Chapter 2.1602.3c.

[7] *See Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

[8] *See Leona N. Travis*, 43 ECAB 227, 240 (1991).

[9] *See Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

[10] *See Leona N. Travis*, *supra* note 8.

[11] *See Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

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.[12]

ANALYSIS

In August 2001, appellant filed an occupational disease claim alleging that she sustained an emotional condition due to various incidents and conditions at work. In two merit decisions, the Office denied her claim on the grounds that she did not establish any compensable employment factors. In an August 24, 2006 decision, the Office denied appellant's request for further review of the merits of her claim on the grounds that her request was untimely filed and failed to demonstrate clear evidence of error.

In its August 24, 2006 decision, the Office properly determined that appellant filed an untimely request for reconsideration. Appellant's reconsideration request was filed on June 12, 2006, more than one year after the Office's October 29, 2002 decision and, therefore, she must demonstrate clear evidence of error on the part of the Office in issuing this decision.

Appellant has not demonstrated clear evidence of error on the part of the Office in issuing its October 29, 2002 decision. She did not submit the type of positive, precise and explicit evidence or argument which manifests on its face that the Office committed an error.

Appellant submitted a reconsideration request letter in which she contended that the Office erred when it determined that she had not established any compensable employment factors. She claimed that the employing establishment forced her to work beyond her medical restrictions and asserted that she had submitted documents which established her claim. These arguments would not be relevant to the main issue of the present case as they provide no further support in establishing the existence of appellant's claimed employment factors. Appellant did not submit any evidence, such as the findings of complaints and grievances, relating to her assertions that the employing establishment engaged in wrongdoing.

For these reasons, the argument submitted by appellant does not raise a substantial question concerning the correctness of the Office's October 29, 2002 decision and the Office properly determined that she did not show clear evidence of error in that decision.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim on the grounds that her request was untimely filed and failed to demonstrate clear evidence of error.

[12] *Leon D. Faidley, Jr., supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 24, 2006 decision is affirmed.

Issued: March 27, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board