

<sup>1</sup> Appellant requested an oral argument before the Board in connection with his appeal. In an October 20, 2009 order, the Board denied appellant's request for an oral argument.

## **FACTUAL HISTORY**

This is the sixth appeal in this case. On May 11, 2000 the Board found that the Office properly denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act in its September 22, 1998 decision.<sup>2</sup> On June 18, 2003 the Board found that the Office properly determined that appellant's June 11, 2000 request for reconsideration was untimely filed and did not establish clear evidence of error.<sup>3</sup> On September 11, 2006 the Board found that the Office's November 25, 2005 decision properly denied appellant's February 18, 2005 request for reconsideration decision as untimely.<sup>4</sup> However, the Office did not address his argument that he had timely filed a hearing request on August 21, 1997. The Board remanded the case to the Office for further review. On June 18, 2007 the Board affirmed the Office's November 20, 2006 decision, which denied appellant's request for a hearing. However, the Board set aside a September 29, 2006 merit decision, as the Office did not address appellant's contention that he timely filed a request for a hearing on August 21, 1997. The case was remanded to the Office to address his evidence and argument.<sup>5</sup> On January 2, 2009 the Board affirmed as modified the Office's January 3, 2008 decision to reflect that, while appellant established a compensable work factor, the medical evidence of record was insufficient to establish that his stroke on January 13, 1997 was causally related to his federal employment.<sup>6</sup> The findings of fact and conclusions of law from the prior decisions are hereby incorporated by reference.

In a letter dated March 30, 2009, appellant requested reconsideration. He advised that he previously requested reconsideration on December 31, 2008 and had submitted evidence from his neuropsychologist and a CA-7 claim for compensation. Appellant indicated that he was submitting a February 17, 2009 report from Dr. M. Shahidul Islam, a Board-certified psychiatrist; witness statements from Coworkers Lonza Bigam dated March 10, 1997, Dwight Reeve dated January 23, 2009 and Robert Valentine dated February 7, 2009; a seven-page description of mail handler duties; an eight-page copy of the Congressional Code of Ethics for Government Service; and the Board's decision of January 2, 2009. The Office received a December 19, 2006 report from Dr. Islam, numerous material from 1997 and 1998 pertaining to return to work issues, grievances filed with the Equal Employment Opportunity Commission and a copy of the Board's January 2, 2009 decision. The record does not contain other documents referenced in appellant's March 30, 2009 letter. The record does contain evidence submitted after the Office's January 3, 2008 merit decision.

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<sup>2</sup> Docket No. 99-602 (issued May 11, 2000).

<sup>3</sup> Docket No. 02-695 (issued June 18, 2003).

<sup>4</sup> Docket No. 06-767 (issued September 11, 2006).

<sup>5</sup> Docket No. 07-405 (issued June 18, 2007). On February 28, 2007 the Board issued an order dismissing appeal in Docket No. 07-870. The Board noted two appeals were docketed for one Office file number and allowed Docket No. 07-405 to proceed. Docket No. 07-870 (issued February 28, 2007).

<sup>6</sup> Docket No. 08-1122 (issued January 2, 2009).

By decision dated May 14, 2009, the Office denied appellant's request for reconsideration on the grounds that it was not timely filed within one year of the Office's January 3, 2008 decision and the evidence did not establish clear evidence of error in the 2008 decision.

On appeal, appellant contends he timely filed a request for reconsideration.

### **LEGAL PRECEDENT**

The Act<sup>7</sup> provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.<sup>8</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must file his or her application for review within one year of the date of that decision.<sup>9</sup> 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 Act.<sup>10</sup>

Section 10.607(b) of the Office's regulations states that the Office will consider an untimely application for reconsideration only if it demonstrates clear evidence of error by the Office in its most recent merit decision. The reconsideration request must establish that the Office's decision was, on its face, erroneous.<sup>11</sup>

### **ANALYSIS**

The Board previously reviewed the merits of this claim in a January 2, 2009 decision. A merit decision of the Board extends the one-year period to request reconsideration of a final decision before the Office.<sup>12</sup> Appellant's request for reconsideration was dated March 30, 2009.<sup>13</sup> As this request was filed within one year after the Board's merit decision, it is timely.

As appellant filed a timely request for reconsideration, the Office improperly evaluated his request for reconsideration pursuant to the clear evidence of error standard. The case will therefore be remanded to the Office for a decision regarding whether the evidence submitted

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<sup>7</sup> 5 U.S.C. § 8101 *et seq.*

<sup>8</sup> 20 C.F.R. § 10.605.

<sup>9</sup> *Id.* at § 10.607(a).

<sup>10</sup> 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>11</sup> 20 C.F.R. § 10.607(b); *D.E.*, 59 ECAB \_\_\_\_ (Docket No. 07-2334, issued April 11, 2008).

<sup>12</sup> *Howard Y. Miyashiro*, 51 ECAB 253 (1999); *Veletta C. Coleman*, 48 ECAB 367 (1997); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3b (January 2004).

<sup>13</sup> Although appellant asserted on appeal that he had filed a request for reconsideration on December 31, 2008, a review of the record does not support this contention.

with the March 30, 2009 request for reconsideration was sufficient to warrant a review of the merits of appellant's claim under the standard for timely requests for reconsideration at 20 C.F.R. § 10.606(b).

### **CONCLUSION**

The Board finds that appellant filed a timely request for reconsideration. Accordingly, this case must therefore be remanded to the Office for an appropriate decision consistent with this opinion.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 14, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: December 7, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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