

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of ROBERT ALSTON and DEPARTMENT OF THE NAVY,
HUMAN RESOURCES OFFICE, Charleston, S.C.

*Docket No. 97-736; Submitted on the Record;
Issued September 16, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

The Board has duly reviewed the case record in the present appeal and finds that the Office properly determined that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).¹ The Office will not review a decision denying or terminating benefits unless the application for review is filed within one year of the date of that decision.² When an application for review is untimely, the Office makes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.³

The Office's last merit decision was issued on January 4, 1993. By letter dated August 27, 1996, appellant's attorney forwarded appellant's request for reconsideration dated January 10, 1996, stating that it was his "understanding that the original request was inadvertently misplaced." Appellant enclosed a sworn affidavit from a coworker, Morris A. Jones, dated January 3, 1996 in which Mr. Jones stated that he had worked with appellant 17 years, that there was much pressure and stress on the job, and that he "had no doubt" that appellant's stroke resulted from the pressure and the stress.

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.138(b)(2); *see also Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

³ *Thankamma Matthews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

By decision dated September 30, 1996, the Office denied appellant's request for reconsideration. The Office stated that appellant's original letter requesting reconsideration was dated January 10, 1996, and therefore the request was untimely as it was filed more than a year after the Office's January 4, 1993 decision. The Office also found that the additional evidence appellant submitted did not establish clear evidence of error.

The Board finds that appellant's request for reconsideration dated January 10, 1996 was untimely as it was filed more than a year after the Office's January 4, 1993 decision. Further, Mr. Jones' January 3, 1996 affidavit does not demonstrate any clear evidence of error by the Office in determining its January 4, 1993 decision that the evidence of record failed to establish that appellant sustained a stroke in the performance of duty, as alleged.

As appellant has not, by the submission of Mr. Jones' affidavit, raised a substantial question as to the correctness of the Office's January 4, 1993 decision, he has failed to establish any clear evidence of error, and the Office did not abuse its discretion in denying a merit review of his claim.

Accordingly, the decision of the Office of Workers' Compensation Programs dated September 30, 1996 is affirmed.

Dated, Washington, D.C.
September 16, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member