U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH ATKINSON and U.S. POSTAL SERVICE,
POST OFFICE, Anchorage, AK

Docket No. 03-1032; Submitted on the Record;
Issued July 2, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration, dated September 18, 2002, was untimely filed and did not present clear evidence of error.

On October 26, 1998 appellant, then a 52-year-old letter carrier, filed a claim for occupational disease asserting that he developed an emotional condition as a result of harassment and discrimination experienced in the performance of duty. Appellant stopped work on October 5, 1998.

In a decision dated March 10, 1999, the Office denied appellant's claim on the grounds that his claim for harassment and discrimination was based on generalities and did not identify the specific incidents or events alleged to have contributed to his emotional condition.

By letter dated April 1, 1999, appellant requested an oral hearing before an Office representative. Subsequently, in order to alleviate scheduling difficulties, appellant agreed to a telephonic hearing, which was held on July 27, 2000.

In a decision dated May 1, 2001, an Office hearing representative affirmed the Office's prior decision. The Office hearing representative found that, while appellant now alleged specific incidents of harassment and discrimination, in each instance the alleged incident was not substantiated by the evidence of record or of an administrative nature and unsupported by the requisite evidence of error or abuse in the implementation of the specified administrative function. Therefore, the hearing representative found that appellant had not established any compensable factors of employment.

By letter dated November 28, 2001, appellant requested reconsideration of the Office hearing representative's decision and submitted additional evidence in support of his request.

In a decision dated December 12, 2001, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that appellant neither raised substantial legal questions nor included new and relevant evidence and thus, it was insufficient to warrant review of the prior decision.

By letter dated September 18, 2002, appellant asked his senator to assist him in seeking reconsideration before the Office. By letter dated September 27, 2002, appellant's senator forwarded appellant's reconsideration request to the Office, together with additional evidence which had been provided by appellant.

In a decision dated December 12, 2002, the Office found that appellant's September 18, 2002 letter was an untimely request for reconsideration of the May 1, 2001 hearing representative's decision and that appellant had not shown clear evidence of error.

The Board finds that the Office properly determined that appellant's request for reconsideration, dated September 18, 2002, was untimely filed and did not present clear evidence of error.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of the Federal Employees' Compensation Act.[1] The Office will not review a decision denying or terminating a benefit 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 undertakes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.[3] Office procedures state 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, if the claimant's application for review shows "clear evidence of error" on the part of the Office.[4]

In implementing the one-year time limitation, the Office's procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues.[5] In this case, the Office issued its last merit decision on May 1, 2001, wherein an Office hearing representative found that appellant had failed to establish any compensable factors of employment in support of his claim for an employment-related emotional condition. As appellant's September 18, 2002 request for reconsideration was made outside the one-year time limitation, which began the day after May 1, 2001, appellant's

[1] 5 U.S.C. §§ 8101-8193.

[2] 20 C.F.R. § 10.607 (1999); *see also Alan G. Williams*, 52 ECAB 180 (2000).

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

[4] *See Gladys Mercado*, 52 ECAB 255 (2001). Section 10.607(b) provides: "[The Office] will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of [it] in its most recent merit decision. The application must establish, on its face, that such decision was erroneous." 20 C.F.R. § 10.607(b) (1999).

[5] *Veletta C. Coleman*, 48 ECAB 367 (1997); *Larry L. Lilton*, 44 ECAB 243 (1992).

request for reconsideration was untimely. Therefore, the Office properly undertook a limited review of the case to determine whether the application for review showed "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. The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error. Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. 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. 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. The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of the Office.[7]

In support of his request for reconsideration, appellant submitted numerous duplicate copies of medical and factual evidence and prior Office decisions already contained in the record and previously reviewed by the Office. The Board has held, however, that evidence that duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[8] In addition to the duplicate copies of earlier evidence, appellant also submitted a letter from his union representative, Clarence Mitchell, in which he asserts that appellant's supervisor was "out to get" appellant, and disputes the allegation that appellant had improperly expanded his lunch hour on a particular occasion. While this letter was not previously considered by the Office and, therefore, constitutes new evidence, the Board notes that this letter essentially summarizes evidence and arguments which were previously submitted to the record and which were fully considered by the Office. This evidence is repetitious of that previously contained in the record and is not sufficient to establish clear evidence of error.[9]

Therefore, the Board finds that the Office's December 12, 2002 decision properly determined that appellant has not presented clear evidence of error, as appellant did not submit any medical or factual evidence sufficient to show that the Office erred in its prior decisions.

[6] *Veletta C. Coleman, supra* note 5*; Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon denied*, 41 ECAB 458 (1990); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(d) (May 1996).

[7] *Howard Y. Miyashiro*, 51 ECAB 253 (1999).

[8] *Linda I. Sprague*, 48 ECAB 386 (1997).

[9] *Id.*

The decision of the Office of Workers' Compensation Programs dated December 12, 2002 is hereby affirmed.

Dated, Washington, DC
July 2, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member