United States Department of Labor
Employees' Compensation Appeals Board

CAROL JONES, Appellant	)	
and	)	**Docket No. 05-1161**
	)	**Issued: September 9, 2005**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, Fort Worth, TX, Employer	)	

Appearances:
Billy D. Hullo, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On April 28, 2005 appellant filed a timely appeal from a March 31, 2005 nonmerit decision of the Office of Workers' Compensation Programs, denying her request for reconsideration on the grounds that it was untimely filed and did not establish clear evidence of error. Because more than one year has elapsed between the last merit decision dated January 9, 2004 and the filing of this appeal on April 28, 2005 the Board lacks jurisdiction to review the merits of appellant's claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the March 31, 2005 nonmerit decision.

ISSUE

The issue is whether the Office properly refused to reopen appellant's claim for reconsideration of the merits on the grounds that her request was not timely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On February 18, 2003 appellant, then a 44-year-old correctional treatment specialist, filed an occupational disease claim alleging that she experienced anxiety, depression and a stress reaction as a result of conditions of her federal employment. Appellant alleged that, following a December 16, 2002 work-related injury, she had received pressure from the employing establishment to return to work prior to being released by her doctor.[1]

In a report dated February 7, 2003, Dr. Bill E. Weldon, a treating physician, stated that appellant suffered injuries on December 16, 2002 when she fell on a wet floor at the employing establishment. He provided diagnoses of sprain and contusion of the left elbow; sprain of the left wrist; strain and contusion of the left knee; neuralgia in the left arm and hand; anxiety; depression; and stress reaction.

By decision dated March 10, 2003, the Office denied appellant's claim on the grounds that she did not establish that she suffered a new, separate injury in the performance of duty.

On March 27, 2003 appellant, by her attorney, submitted a request for an oral hearing which was conducted on October 23, 2003. She submitted medical evidence, including a report from Dr. Moore dated July 1, 2003, in which he opined that appellant's depression was tied to her December 16, 2002 work-related injuries; a letter dated October 13, 2003 in which he stated that he had been treating her for depression for several months; and a letter of medical necessity in which Dr. Moore opined that appellant's depression stemmed from her injuries, subsequent pain, fear of not being able to work and fear of losing her job.

At the hearing, appellant testified that the employing establishment pressured her to return to work even though she had not been released by her doctor; that she had been placed on "absent without leave" status; that she received a letter, which she found in her yard, directing her to return to work; that her supervisor left her medical records on her desk in public view; that she was denied the right to file an Equal Employment Opportunity (EEO) claim; that being placed on "absent without leave" status after she decided to file an EEO claim was a reprisal; that she was required to perform all of her regular duties after she returned to work, even though she was only working two hours per day; that she was given conflicting instructions about her job duties; that she had been misinformed by the employing establishment regarding Office procedures; that she was afraid that she could not protect herself from the inmates due to her injuries; that her password was stressful and was an indication that she was going to be terminated; and that she was unable to continue working and was mentally distraught.

By letter dated December 2, 2003, Warden Mallisham refuted the allegations made by appellant at the hearing and opined that many of the issues raised by her were based on her misunderstanding of or noncompliance with the Office. She stated that appellant was placed on absent without leave status because she failed to submit proper documentation; she did receive continuation of pay from December 18, 2002 through January 31, 2003; she was offered a light-

[1] The record reflects that appellant filed a traumatic injury claim on December 16, 2002 (file number 162050327) for injuries sustained when she slipped on a wet floor at work.

duty assignment in accordance with work restrictions received from her physician; appellant's medical records were not improperly handled; her password had been randomly selected; and her return to work letter had been mailed to her home. In a statement dated December 13, 2003, appellant reiterated the allegations made at the hearing and denied the allegations made by the employing establishment.

By decision dated January 9, 2004, the Office hearing representative affirmed the Office's March 10, 2003 decision, finding that appellant had not established a compensable work factor.

On January 10, 2005 appellant, through her representative, requested reconsideration. In his request, counsel argued that error and abuse by the Federal Medical Center in Carswell were a direct cause of an independent occupational illness arising out of this situation; her supervisors acted with a collaborated, vindictive motive and undertook a deliberate, calculated, systematic campaign to humiliate, silence and degrade appellant, both personally and professionally; and employing establishment's personnel had deliberately inflicted the emotional condition of "anxiety stress reaction depression" to her. She also submitted an affidavit dated January 7, 2005, in which she reiterated her allegations against the employing establishment; a letter dated January 10, 2005 from Dr. Moore reflecting his belief that appellant's hostile work environment contributed to her depression; letters dated March 7 and October 18, 2004 in which he opined that her stress claim was related to an on-the-job injury; a position description for correctional treatment specialist; a limited-duty job offer dated February 10, 2003; and various other previously submitted medical reports.

By decision dated March 31, 2005, the Office denied appellant's request for reconsideration on the grounds that it was not timely filed and failed to present clear evidence of error.

LEGAL PRECEDENT

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of the Federal Employees' Compensation Act.[2] 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.[3] 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.[4] The 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

[2] 5 U.S.C. §§ 8101-8193, 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.607; *see also Alan G. Williams*, 52 ECAB 180 (2000).

[4] *Veletta C. Coleman*, 48 ECAB 367 (1997).

evidence of error " on the part of the Office.[5] In this regard, the Office will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.[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 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.[7] 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's decision.[8] The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of the Office such that the Office abused its discretion in denying merit review in the face of such evidence.[9]

ANALYSIS

The Office found that appellant failed to file a timely application for review. 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.[10] The last merit decision in this case was the Office's January 9, 2004 decision. As appellant's January 10, 2005 request for reconsideration was submitted more than one year after the last merit decision of record, it was untimely. Consequently, she must demonstrate "clear evidence of error" on the part of the Office in denying her claim for compensation.[11]

---

[5] *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 decision. The application must establish, on its face, that such decision was erroneous." 20 C.F.R. § 10.607(b).

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

[7] *Dorletha Coleman*, 55 ECAB ___ (Docket No. 03-868, issued November 10, 2003); *Leon J. Modrowski*, 55 ECAB ___ (Docket No. 03-1702, issued January 2, 2004).

[8] *Id. See also Alberta Dukes*, 56 ECAB ___ (Docket No. 04-20, issued January 11, 2005).

[9] *Pete F. Dorso*, 52 ECAB 424 (2001); *John Crawford*, 52 ECAB 395 (2001).

[10] *Veletta C. Coleman*, *supra* note 4; *Larry L. Lilton*, 44 ECAB 243 (1992).

[11] 20 C.F.R. § 10.607(b); *Donna M. Campbell*, 55 ECAB ___ (Docket No. 03-2223, issued January 9, 2004).

Appellant has neither alleged, nor presented evidence establishing clear evidence of error on the part of the Office. Her counsel argued that error and abuse by the Federal Medical Center in Carswell were a direct cause of an independent occupational illness arising out of this situation; that appellant's supervisors acted with a collaborated, vindictive motive and undertook a deliberate, calculated, systematic campaign to humiliate, silence and degrade her, both personally and professionally; and that the employing establishment's personnel had deliberately inflicted the emotional condition of "anxiety stress reaction depression" to her. Although the representative contended that the employing establishment erred, he did not argue that the Office erred or raise a substantial question concerning the correctness of the Office's January 9, 2004 decision.

In her January 7, 2005 affidavit, appellant merely reiterated her allegations against the employing establishment. Similarly, in letters dated March 7 and October 18, 2004 and January 10, 2005, Dr. Moore repeated his belief that her hostile work environment contributed to appellant's depression and that her stress was related to an on-the-job injury. Material which is cumulative or duplicative of that already in the record has no evidentiary value in establishing a claim.[12] The Board finds that the evidence submitted in support of appellant's request for reconsideration was cumulative in nature and does not constitute a basis for reopening this case for merit review. Moreover, on January 9, 2004 the Office found that she failed to establish a compensable employment factor. Only when a compensable work factor has been established is the medical evidence relevant in determining whether appellant has established an employment-related emotional condition.[13] Therefore, the medical evidence submitted by her was irrelevant.

The evidence submitted in support of appellant's untimely reconsideration request, is thus, insufficient to establish clear evidence of error. To establish clear evidence of error, the evidence must be of sufficient probative value to *prima facie* shift the weight of evidence in favor of the claimant and raise a substantial question as to the correctness of the Office's decision.[14] The Board finds that the evidence submitted on reconsideration fails to meet this standard.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for review on March 31, 2005. The Board also finds that appellant's reconsideration request was untimely and failed to establish clear evidence of error.

[12] *See Shirley Rhynes*, 55 ECAB ___ (Docket No. 04-1299, issued September 9, 2004); *James A. England*, 47 ECAB 115 (1995); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

[13] *See Parley A. Clement*, 48 ECAB 302 (1997).

[14] *See Veletta C. Coleman*, *supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 31, 2005 is affirmed.

Issued: September 9, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board