

Appellant, a 49-year-old nurse, filed a Form CA-2 claim for benefits on April 17, 2001, alleging that she developed a stress-related condition caused by factors of her employment. She

asserted that she was subjected to constant write-ups, schedule changes and memoranda to the staff from management which contained demeaning and derogatory comments about her.

By decision dated February 4, 2002, the Office denied appellant's claim for a stress-related condition.

By letter dated February 9, 2002, appellant requested a hearing.

By decision dated August 7, 2002, an Office hearing representative affirmed the February 4, 2002 decision.¹ The hearing representative found that appellant established a compensable factor of employment, but failed to submit medical evidence establishing that her emotional condition was causally related to the employment factor.

By letter dated July 21, 2003, appellant requested reconsideration.

By decision dated August 27, 2003, the Office denied modification of the previous decisions.

On November 13, 2003 appellant requested reconsideration. By decision dated February 24, 2004, the Office denied modification of the previous decisions. On September 3, 2004 appellant requested reconsideration. By decision dated April 20, 2005, the Office denied modification of the previous decisions.

On May 11, 2006 appellant requested reconsideration. She submitted an illegible piece of notebook paper dated February 30, 2005 and a facsimile cover sheet dated May 3, 2006 which stated that she was supposed to come by a physician's office to sign a medical release.

By decision dated May 31, 2006, the Office denied appellant's request for reconsideration without a merit review, finding that appellant had not timely requested reconsideration and failed to submit factual or medical evidence sufficient to establish clear evidence of error. The Office stated that appellant was required to present evidence which showed that the Office made an error, and that there was no evidence submitted that showed that its final merit decision was incorrect.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act² does not entitle an employee to a review of an Office decision as a matter of right.³ This section, vesting the Office

¹ The hearing representative issued her decision based on review of the written record.

² 5 U.S.C. § 8128(a).

³ *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

with discretionary authority to determine whether it will review an award for or against compensation, provides:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may--

(1) end, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a).⁴ As one such limitation, the Office has stated that it 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.⁵ The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted by the Office under 5 U.S.C. § 8128(a).⁶

In those cases where a request for reconsideration is not timely filed, the Board had held however that the Office must nevertheless undertake a limited review of the case to determine whether there is clear evidence of error pursuant to the untimely request.⁷ Office procedures state that the Office will reopen an appellant’s case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(b), if appellant’s application for review shows “clear evidence of error” on the part of the Office.⁸

To establish clear evidence of error, an appellant must submit evidence relevant to the issue which was decided by the Office.⁹ The evidence must be positive, precise and explicit and must be manifested on its face that the Office committed an error.¹⁰ Evidence which does not raise a substantial question concerning the correctness of the Office’s decision is insufficient to establish clear evidence of error.¹¹ It is not enough merely to show that the evidence could be

⁴ Thus, although it is a matter of discretion on the part of the Office whether to review an award for or against payment of compensation, the Office has stated that a claimant may obtain review of the merits of a claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office. *See* 20 C.F.R. § 10.606(b).

⁵ 20 C.F.R. § 10.607(b).

⁶ *See* cases cited *supra* note 2.

⁷ *Rex L. Weaver*, 44 ECAB 535 (1993).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (May 1991).

⁹ *See Dean D. Beets*, 43 ECAB 1153 (1992).

¹⁰ *See Leona N. Travis*, 43 ECAB 227 (1991).

¹¹ *See Jesus D. Sanchez*, *supra* note 3.

construed so as to produce a contrary conclusion.¹² 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.¹³ 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.¹⁴ The Board makes an independent determination of whether an appellant 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.¹⁵

ANALYSIS

The Office properly determined that appellant failed to file a timely application for review. The Office issued its last merit decision in this case on April 20, 2005. Appellant requested reconsideration on May 11, 2006. Her request is untimely as it was outside the one-year time limit.

The Board finds that appellant's May 11, 2006 request for reconsideration failed to establish clear evidence of error. The evidence appellant submitted is not pertinent to the underlying issue. The illegible piece of notebook paper dated February 30, 2005 and May 3, 2006 facsimile cover sheet indicating that appellant intended to sign a medical release at a physician's office are of no evidentiary value as they do not provide a medical opinion on the underlying claim. This evidence does not provide any reasoned medical opinion on the issue of whether appellant sustained a stress-related condition or disability causally related to factors of her employment. No other evidence was received by the Office.

The Office reviewed the evidence appellant submitted and properly found it to be insufficient to *prima facie* shift the weight of the evidence in favor of appellant. Appellant did not submit any medical evidence in support of her claim. Consequently, the evidence submitted by appellant on reconsideration is insufficient to establish clear evidence of error on the part of the Office such that the Office abused its discretion in denying merit review. The Board finds that the Office did not abuse its discretion in denying further merit review.

CONCLUSION

The Board finds that appellant has failed to submit evidence establishing clear error on the part of the Office in her reconsideration request dated May 11, 2006. Inasmuch as appellant's reconsideration request was untimely filed and failed to establish clear evidence of error, the Office properly denied further review on May 31, 2006.

¹² See *Leona N. Travis*, *supra* note 10.

¹³ See *Nelson T. Thompson*, 43 ECAB 919 (1992).

¹⁴ *Leon D. Faidley, Jr.*, *supra* note 3.

¹⁵ *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2006 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: October 19, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board