United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 06-1646**
	)	**Issued: January 5, 2007**
TENNESSEE VALLEY AUTHORITY,	)	
Cumberland City, TN, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 13, 2006 appellant filed a timely appeal from the April 17, 2006 nonmerit decision of the Office of Workers' Compensation Programs which denied his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this denial. The Board does not have jurisdiction to review the merits of appellant's case.

ISSUE

The issue is whether the Office properly denied appellant's September 10, 2005 request for reconsideration.

FACTUAL HISTORY

On the prior appeal,[1] the Board noted that the last merit decision in appellant's case was the Office's January 20, 2000 decision reducing his compensation for wage loss because he failed to cooperate with vocational rehabilitation efforts. It determined that the earliest evidence

[1] Docket No. 04-1217 (issued September 13, 2004).

of his intent to request reconsideration came on November 7, 2001 more than a year after the January 20, 2000 decision. It found that this was untimely. The Board further found that appellant failed to demonstrate clear evidence of error in the Office's January 20, 2000 decision. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

On September 10, 2005 appellant requested reconsideration. He submitted, among other things, what he stated was a copy of his original request for reconsideration, dated January 10, 2001, as well as a copy of the delivery receipt.

In a decision dated April 17, 2006, the Office denied appellant's September 10, 2005 request for reconsideration. It found that the request was untimely and failed to show clear evidence of error. The Office found that appellant submitted no substantial argument or evidence establishing error in the January 20, 2000 decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.[2] The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[3]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[4]

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.[5] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[6]

[2] 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.605 (1999).

[4] *Id*. at § 10.606.

[5] *Id*. at § 10.607(a).

[6] *Id*. at § 10.608.

The Office will consider an untimely application only if the application demonstrates clear evidence of error on the part of the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.[7]

The term "clear evidence of error" is intended to represent a difficult standard.[8] If clear evidence of error has not been presented, the Office should deny the application by letter decision, which includes a brief evaluation of the evidence submitted and a finding made that clear evidence of error has not been shown.[9]

ANALYSIS

The last merit decision in appellant's case remains the Office's January 20, 2000 decision reducing his compensation for wage loss because he failed to cooperate with vocational rehabilitation efforts. He had one year from the date of that decision to file a timely request for reconsideration. Appellant's September 10, 2005 request for reconsideration is untimely. To obtain a merit review of his case, therefore, he must establish clear evidence of error in the Office's January 20, 2000 decision.

In its January 20, 2000 decision, the Office noted that, when appellant entered his vocational rehabilitation training program, his counselor's reports consistently confirmed that he was very successful and highly motivated in his schooling program. Problems arose, however, by 1999:

> "During this period we were receiving regular reports from your rehabilitation counselor documenting numerous failed attempts to communicate with you. He described numerous attempts at telephone contacts with either no answer or no response to his messages. The rehabilitation counsel sent you letters asking for appointments to meet with you. You did not respond to his letters or attend the appointments. He sent you faxes, with confirmed receipt of the fax, but with no response on your part. The rehabilitation counsel requested in writing that you provide your current school grade reports and schedules and you failed to provide these to him. Because of your refusal to communicate with him, he has not been able to verify whether you have continued with your schooling after Dr. McLaughlin's release or whether or when you will graduate as originally scheduled."

The Office advised appellant on October 27, 1999 that he was not cooperating with his vocational rehabilitation counselor. It explained what cooperation meant and notified him of the provisions of 5 U.S.C. § 8113(b). The Office gave appellant 30 days to comply with his training program or to show good cause for not cooperating. After its October 27, 1999 letter, appellant

[7] *Id*. at § 10.607.

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3.c (January 2004).

[9] *Id*. at Chapter 2.1602.3.d(1).

did not contact the rehabilitation counselor or specialist as instructed. He did not respond with any written reasons for not continuing to comply with his Office-sponsored training program.

This was the basis of the Office's January 20, 2000 decision. The Board finds that, in appellant's September 10, 2005 request for reconsideration he does not establish on its face that the Office's January 20, 2000 decision was erroneous. The evidence does not clearly show that he fully cooperated with his counselor in 1999, nor does it clearly establish good cause for the lack of communication the counselor reported. Further, appellant confines his argument to the topic of whether he filed a timely request for reconsideration in January 2001. This is irrelevant to whether the Office properly found a failure to cooperate with vocational rehabilitation.

The Board finds that appellant's September 10, 2005 request for reconsideration is untimely and fails to show clear evidence of error in the Office's January 20, 2000 merit decision. The Board will, therefore, affirm the Office's April 17, 2006 nonmerit decision denying that request.

CONCLUSION

The Board finds that the Office properly denied appellant's September 10, 2005 request for reconsideration. That request was untimely and failed to show clear evidence of error in the Office's January 20, 2000 decision reducing his compensation.

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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