

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERNICE L. HILL and U.S. POSTAL SERVICE,
WEATHERS STATION, St. Louis, MO

*Docket No. 98-389; Submitted on the Record;
Issued August 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for merit review under 5 U.S.C. § 8128(a) on the grounds that appellant's request for reconsideration was untimely filed and failed to present clear evidence of error.

The Board has duly reviewed the case record in this appeal and finds that the Office did not abuse its discretion in refusing to reopen appellant's case for merit review under 5 U.S.C. § 8128(a) on the grounds that appellant's request for reconsideration was untimely filed and failed to present clear evidence of error.

On June 26, 1993 appellant, then a letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her back and stomach when her jeep went out of control and hit another motor vehicle. Appellant stopped work on June 26, 1993.¹

The Office accepted appellant's claim for low back strain.

By decision dated September 19, 1995, the Office found the medical evidence of record insufficient to establish that appellant was disabled intermittently during the period July 8, 1993 through June 29, 1995 except for the dates April 26, June 16 through 17 and June 23, 1995.

By decision dated March 25, 1996, the Office terminated appellant's compensation effective that date based on the second medical opinion of Dr. Russell C. Cantrell, a physiatrist, indicating that appellant no longer had any residuals of the June 26, 1993 employment injury.

¹ On August 28, 1995 appellant accepted the limited-duty position of modified city carrier offered by the employing establishment.

In an August 27, 1997 letter, appellant requested reconsideration of the Office's decision. By decision dated September 30, 1997, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that it was untimely filed and that it did not establish clear evidence of error.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.² Inasmuch as appellant filed her appeal with the Board on October 31, 1997, the only decision properly before the Board is the Office's September 30, 1997 decision denying appellant's request for a review of the merits of its March 25, 1996 decision.

The Office through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of the Federal Employees' Compensation Act. 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 The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a).⁴

In this case, the Office properly determined 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.⁵ The Office issued its last merit decision in this case on March 25, 1996 wherein it terminated appellant's compensation on the grounds that appellant no longer had any disability causally related to her June 26, 1993 employment injury. Inasmuch as appellant's August 27, 1997 request for reconsideration was made outside the one-year time limitation, the Board finds that it was untimely filed.

In those cases where a request for reconsideration is not timely filed, the Board has 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.⁶ Office procedures state that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing

² 20 C.F.R. §§ 501.2(c), 501.3(d)(2); *Oel Noel Lovell*, 42 ECAB 537 (1991).

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

⁴ *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

⁵ *Larry L. Lilton*, 44 ECAB 243 (1992).

⁶ *Gregory Griffin*, *supra* note 7.

limitation set forth in 20 C.F.R. § 10.138(b)(2), if the claimant's application for review shows "clear evidence of error" on the part of the Office.⁷

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.⁸ The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error.⁹ Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.¹⁰ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹¹

In this case, appellant contended that she did not receive the Office's decision terminating her compensation. The record shows that the Office's notice of proposed termination dated February 20, 1996 and the Office's March 25, 1996 decision terminating appellant's compensation were properly addressed to appellant. Appellant's August 27, 1997 letter fails to show clear evidence of error in this regard.

Because appellant's August 27, 1997 request for reconsideration was untimely filed and failed to show clear evidence of error in the Office's March 25, 1996 decision, the Board finds that the Office properly denied that request.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsideration*, Chapter 2.1602, para. 3b (January 1990) (the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.138(b)(2), if the claimant's application for review shows "clear evidence of error" on the part of the Office); *Thankamma Mathews*, 44 ECAB 788 (1993); *Jesus D. Sanchez*, *supra* note 8.

⁸ *Dean D. Beets*, 43 ECAB 1153 (1992).

⁹ *Leona N. Travis*, 43 ECAB 227 (1991).

¹⁰ *Jesus D. Sanchez*, *supra* note 8.

¹¹ *Leona N. Travis*, *supra* note 13.

The September 30, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
August 20, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member