

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON A. ROBINSON and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Detroit, MI

*Docket No. 97-2732; Submitted on the Record;
Issued July 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration as untimely filed and lacking clear evidence of error.

The Board has carefully reviewed the record evidence and finds that the Office improperly denied appellant's request for reconsideration. The only decision the Board may review on appeal is the May 8, 1996 letter, which denied appellant's request for reconsideration, because this is the only final Office decision issued within one year of the filing of appellant's appeal on February 12, 1997.¹

Section 8128(a) of the Federal Employees' Compensation Act² does not entitle a claimant to a review of an Office decision as a matter of right.³ Rather, the Office has the discretion to reopen a case for review on the merits, on its own motion or on application by the claimant. The Office must exercise this discretion in accordance with section 10.138(b) which provides that the Office will not review a decision denying or terminating benefits unless the application is filed within one year of the date of that decision.⁴ The Board has held that the imposition of the one-year time limitation for filing an application for review was not an abuse of the discretionary authority granted the Office under section 8128(a) of the Act.⁵

¹ *Joseph L. Cabral*, 44 ECAB 152, 154 (1992); *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. §§ 8101-8193 (1974); 5 U.S.C. § 8128(a).

³ *Leon D. Faidley, Jr.*, 41 ECAB 104, 109 (1989).

⁴ 20 C.F.R. § 10.138(b)(2); *Larry J. Lilton*, 44 ECAB 243, 249 (1992).

⁵ *Leon D. Faidley, Jr.*, *supra* note 3 at 111.

The one-year limitation does not restrict the Office from performing a limited review of any evidence submitted by a claimant with an untimely application for reconsideration.⁶ The Office is required to review such evidence to determine whether a claimant has submitted clear evidence of error on the part of the Office, thereby requiring merit review of the claimant's case.⁷ Thus, if reconsideration is requested more than one year after the issuance of the decision, the claimant may obtain a merit review only if the request is accompanied by evidence which demonstrates clear evidence of error on the part of the Office.⁸

Clear evidence of error is intended to represent a difficult standard.⁹ The claimant must present evidence which on its face shows that the Office made an error such as, for example, proof of a miscalculation in a schedule award. Evidence such as a detailed, well-rationalized medical report which, if submitted prior to the Office's denial, would have created a conflict in medical opinion requiring further evidentiary development by the Office, is not clear evidence of error.¹⁰

In this case, appellant filed a notice of occupational disease on February 5, 1994 claiming that her carpal tunnel syndrome as well as anxiety and stress were caused by employment factors, including an ongoing altercation with a coworker, the lack of counseling following a traumatic incident and lack of security in the workplace.

On July 13, 1994 the Office informed appellant that she must submit more factual and medical evidence in support of her claim. Appellant responded with details of harassment by supervisors because of her physical restrictions, overwork, the unsafe working environment, changes in her tour of duty, intimidating incidents by a coworker who was also on light duty and her physical and mental conditions. On October 19, 1994 the Office denied appellant's claim on the grounds that fact of injury had not been established.

Appellant requested an oral hearing, which was held on August 3, 1995. On October 4, 1995 the hearing representative denied the claim on the grounds that appellant failed to establish that either her physical condition or her emotional problems were causally related to work factors.

By letter dated December 8, 1995, appellant requested reconsideration and submitted a March 10, 1995 report, from Dr. Laran Lerner, an osteopathic practitioner in physical medicine

⁶ *Bradley L. Mattern*, 44 ECAB 809, 816 (1993).

⁷ *Howard A. Williams*, 45 ECAB 853, 857 (1994).

⁸ *Jesus S. Sanchez*, 41 ECAB 964, 968 (1990).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (May 1991).

¹⁰ *Id.*; see *Gregory Griffin*, 41 ECAB 186, 200 (1989), *petition on recon. denied*, 41 ECAB 458 (1990) (finding that the Office's failure to exercise discretionary authority to review medical evidence submitted with an untimely reconsideration request required remand).

and rehabilitation. On May 8, 1996 the Office denied reconsideration on the grounds that appellant's request was untimely filed and failed to establish clear evidence of error.¹¹

The Board finds that appellant's request for reconsideration was timely filed. To its October 4, 1995 denial of appellant's claim, the hearing representative attached a copy of her appeal rights. The information states that if a claimant has additional evidence she believes to be pertinent, she may request reconsideration of the decision; such a request must be made within one year of the date of the decision, must be in writing and must clearly state the grounds for such a request.

Appellant's request was dated December 8, 1995, well within the one-year limitation and she submitted a medical report in support of her request. The record indicates that these documents were received by the Office on February 2, 1996.¹² The Office mistakenly found the December 8, 1995 request untimely, based on an "October 19, 1994" denial of appellant's claim and reviewed the evidence to determine whether it established clear evidence of error. Thus, the Board finds that the Office abused its discretion in denying appellant's request for reconsideration.

Inasmuch as the Office erroneously reviewed the medical evidence submitted in support of reconsideration under the clear-evidence-of-error standard, the Board will remand the case to the Office for review of this evidence under the proper standard of review.

The May 8, 1996 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

¹¹ Appellant had filed two claims for compensation; A9-391546 is presently on appeal before the Board.

¹² *Cf. Henry B. Sutherland*, 47 ECAB 712, 715 (1996) (finding that the Office failed to receive appellant's faxed request for reconsideration within the one-year time limitation).

Michael E. Groom
Alternate Member