

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PETER T. CADY and DEPARTMENT OF THE ARMY, ARMY MATERIEL
COMMAND, ROCK ISLAND ARSENAL, Rock Island, IL

*Docket No. 97-1940; Submitted on the Record;
Issued September 9, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration under 5 U.S.C. § 8128 on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion in failing to reopen appellant's case for merit review.

The facts in this case, indicate that on September 23, 1984 appellant, then a 36-year-old journeyman machinist, sustained employment-related aggravation of asthmatic bronchitis and generalized edema. He was reassigned to a supply clerk position beginning July 14, 1985, received partial compensation for loss of wage-earning capacity and stopped work on September 6, 1986, after it was determined that the supply clerk position was not suitable employment due to a preexisting back condition caused by his military service. He was then placed on the periodic rolls. By letter dated June 3, 1994, the Office proposed to terminate appellant's compensation benefits and, by decision dated July 6, 1994, the Office terminated his compensation benefits.¹ Following appellant's request, a hearing was held on March 15, 1995. In a decision dated July 7, 1995 and finalized July 11, 1995, an Office hearing representative affirmed the prior decision. Appellant's appeal rights were included with this decision. In an August 23, 1995 letter, the Office advised appellant that he should follow the appeal rights outlined in the July 11, 1995 decision. By letter dated September 27, 1996, appellant's congressional office queried the Office regarding a reconsideration request mailed to the Office on May 31, 1996 and attached a copy of the aforementioned request. By letter dated October 10, 1996, the Office informed the congressional office that the May 31, 1996 request had not been

¹ The Office based its opinion on a second opinion evaluation provided by Dr. George A. Schoonover, a Board-certified pulmonologist, who advised that appellant had no employment-related lung disease.

received by the Office.² On January 10, 1997 appellant, through his congressional office, requested reconsideration and on January 24, 1997 submitted additional evidence.

The only decision before the Board is the Office's February 26, 1997 decision denying appellant's request for reconsideration of the July 11, 1995 decision. Because more than one year had elapsed between the issuance of this decision and May 16, 1997, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the July 11, 1995 Office decision.³

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁴ 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.⁵ 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.⁶

The Board finds that, as more than one year had elapsed from the date of issuance of the Office's July 11, 1995 merit decision and appellant's request for reconsideration dated January 10, 1997, his request for reconsideration was untimely. The Board further finds that the evidence submitted is insufficient to establish clear evidence of error.

In support of his request for reconsideration, appellant submitted copies of publications regarding multiple chemical sensitivity, a July 25, 1994 report from Dr. John C. Dannenfeldt and a December 12, 1996 report from Dr. William J. Meggs.

Initially, the Board notes that medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.⁷ Dr. Dannenfeldt, who is Board-certified in family practice, merely indicated that he had cared for appellant from June 1983 until August 1986 and provided no opinion regarding appellant's condition in July 1995 when his compensation benefits were terminated. Dr. Meggs, who is Board-certified in internal medicine, allergy and

² The record also contains correspondence between appellant, his congressional office and the Office regarding his pay rate that does not reference the decision in question in the instant appeal to the Board, as well as correspondence following the October 13, 1996 letter regarding appellant's reconsideration request and the type evidence needed.

³ See 20 C.F.R. § 501.3(d)(2).

⁴ 5 U.S.C. § 8128(a).

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

⁶ *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁷ See *Dominic E. Coppo*, 44 ECAB 484 (1993).

immunology, submitted a December 12, 1996 report in which he advised that he had reviewed appellant's medical records. He stated:

“The medical record overwhelmingly supports a diagnosis of occupationally-induced reactive airway disease with concomitant chemical sensitivity. This diagnosis is true to a very high degree of medical certainty. His activities are limited to places with unpolluted indoor air.”

The Board finds that Dr. Meggs' report is cursory and unexplained and is, therefore, of little probative value.⁸ Therefore, as appellant has not, by the submission of factual and medical evidence, raised a substantial question as to the correctness of the Office's July 11, 1995 decision, he has failed to establish clear evidence of error and the Office did not abuse its discretion in denying a merit review of his claim.

The decision of the Office of Workers' Compensation Programs dated February 26, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 9, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁸ See generally *Durwood H. Nolin*, 46 ECAB 818 (1995).