

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA C. LOCKETT and U.S. POSTAL SERVICE,
POST OFFICE, Honolulu, HI

*Docket No. 99-804; Submitted on the Record;
Issued June 19, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly found that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

On June 1, 1996 appellant, then a 51-year-old clerk, filed a notice of traumatic injury, Form CA-1, alleging that on April 23, 1996 she sustained stress and fear when she learned that another postal clerk made a verbal threat to kill her. Appellant stopped working on May 31, 1996. In a statement dated July 21, 1996, appellant explained that a coworker, Amy Lee, came over to her at work on April 23, 1996 and told her that approximately three months earlier, another coworker, Betty Koki, walked past Ms. Lee with clenched fists at her side and said, "I hate [appellant] so much, if I had a gun I would shoot her." In a statement dated July 21, 1996, appellant stated that she reported the incident to her supervisor, Darrell Snyder, who informed her the next evening that he would check with his supervisor on how to proceed and would interview Ms. Lee to make a report to the Postal Inspection Service.

On May 6, 1996 having heard nothing from Mr. Snyder appellant contacted the employing establishment's inspector Judy Brown, and informed her of her concern. Appellant explained that she had had a prior incident with Ms. Koki in November 1990 when Ms. Koki accused her of bizarre actions such as helping her husband kill her first baby in 1958 for witchcraft purposes. On May 24, 1996 Mr. Snyder submitted a statement he had obtained from Ms. Lee to appellant. Appellant indicated that the employing establishment had subsequent discussions with her about Ms. Koki's threat but appellant stated that she felt management was not taking her seriously. She stated that the situation caused her to be "very upset, depressed and anxious."

Appellant submitted evidence to support her claim including statements from Ms. Lee dated May 23 and July 20, 1996, statements from other coworkers and medical reports from her treating physicians, Dr. Alvin E. Murphy, Jr., a Board-certified psychiatrist and neurologist,

dated June 5 and July 1, 1996 and from Dr. Shepard C. Ginandes, a Board-certified psychiatrist and neurologist, dated July 22, 1996.

By decision dated September 17, 1996, the Office denied appellant's claim, stating that appellant had failed to establish a fact of injury arising out of the performance of duty.

By decision dated April 15, 1997, the Branch of Hearings and Review denied appellant's request for a hearing before an Office hearing representative.

By letter dated May 29, 1997, appellant requested reconsideration of the Office's decision and submitted additional evidence. The evidence included three medical reports from Dr. Ginandes dated May 19, 1997, a statement of medical expenses and a "Requirement to Submit Medical Clearance" memorandum from the employing establishment to Ms. Koki dated September 12, 1996 indicating that she had signed a firm choice agreement to satisfactorily participate in an Employee Assistance Program (EAP) and her return to work was contingent upon her obtaining a medical certificate stating that she posed no threat to herself or to others, particularly appellant. Appellant also submitted a copy of the firm choice agreement dated July 10, 1996 and a letter from the employing establishment dated June 17, 1997 showing resolution of appellant's grievance pertaining to her allegation that management failed to provide her with a safe work environment. Appellant was granted temporary light duty until she could return to full duty.

By decision dated November 4, 1997, the Office denied modification of its prior decisions. The Office found that the evidence of record did not establish that a credible threat was made by Ms. Koki against appellant.

By letter dated June 14, 1998, appellant requested reconsideration of the Office's decision and submitted additional evidence consisting of a statement dated May 21, 1998 from Ms. Lee, the September 12, 1996 "Requirement to Submit Medical Clearance" memorandum from the employing establishment, a memorandum of an interview between Ms. Brown, the inspector and Ms. Koki dated May 24, 1996 and a copy of the firm choice agreement dated July 10, 1996. Appellant also submitted correspondence from the employing establishment to Dr. Ginandes dated October 15, 1996 inquiring whether the fact that Ms. Koki would not be allowed to return to work absent medical documentation showing she posed no threat to appellant would affect his opinion regarding appellant's ability to work a routing slip dated March 17, 1997 confirming that Ms. Koki would not be able to return to work without the appropriate medical certificate and a medical report from Dr. Ginandes dated April 23, 1996 addressing an exacerbation of appellant's April 23, 1996 stress injury resulting from an employee threatening other employees.

By decision dated July 16, 1998, the Office denied appellant's request for reconsideration stating that, since the letter requesting reconsideration was dated June 23, 1998, more than a year after the Office's original merit decision dated September 17, 1996, the request for reconsideration was untimely and the evidence appellant submitted in support of her request did not establish clear evidence of error.

The Board finds that appellant's June 14, 1998 request for reconsideration was timely filed.

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.¹ As appellant filed the appeal with the Board on December 7, 1998, the only decision properly before the Board is the July 14, 1998 decision denying appellant's request for reconsideration.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).² The Office will not review a decision denying or terminating a benefits unless the application for review is filed within one year of the date of the decision.³ When the 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.⁴ Contrary, to the Office's finding, the one-year toll for filing commences with the date of the Office's last merit decision, which, as in this case, may not necessarily be the same as the Office's original decision.⁵ Since, in this case, the Office's last merit decision was November 4, 1997 appellant's letter requesting reconsideration dated June 14, 1998 was filed within a year of the November 4, 1997 decision and, therefore, is timely. The Office, therefore, erroneously applied the clear evidence of error standard to a review of the evidence submitted. For this reason, the case will be remanded to the Office to apply the proper standard under 20 C.F.R. § 10.138.

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Thankamma Matthews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁵ *See Veletta C. Coleman*, 48 ECAB 367, 369 (1997).

The decision of the Office of Workers' Compensation Programs dated July 16, 1998 is hereby set aside and the case remanded for further action in conformance with this decision.

Dated, Washington, D.C.
June 19, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member