U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE M. WILLIAMSON and U.S. POSTAL SERVICE, POST OFFICE, Indianapolis, IN

Docket No. 99-740; Submitted on the Record;
Issued May 5, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was not timely filed and did not demonstrate clear evidence of error.

This case has previously been on appeal before the Board. By decision and order dated March 6, 1996, the Board found that appellant had not established that her disability beginning July 16, 1991 was causally related to her April 27, 1974 or August 19, 1989 employment injuries or to factors of her employment.[1]

By letter dated August 30, 1998, appellant requested reconsideration and submitted additional evidence. By decision dated September 25, 1998, the Office found that appellant's request for reconsideration was not filed within the one-year time limit set forth by 20 C.F.R. § 10.138(b)(2) and did not demonstrate clear evidence of error.

[1] Docket No. 94-995.

Section 8128(a) of the Federal Employees' Compensation Act[2] does not entitle a claimant to a review of an Office decision as a matter of right.[3] This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
>
> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, 20 C.F.R. § 10.138(b)(2) provides that "the Office will not review ... a decision denying or terminating a benefit unless the application is filed within one year of the date of that decision." The Board has found that the imposition of this one-year limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).[4]

The one-year time limitation of 20 C.F.R. § 10.138(b)(2) begins to run on the date of the original Office decision. However, a right to reconsideration within one year accompanies any subsequent merit decision, including a decision of the Employees' Compensation Appeals Board.[5]

In the present case, the most recent merit decision was the Board's decision and order dated March 6, 1996. Appellant had one year from the date of this decision to request reconsideration and did not do so until August 30, 1998. Appellant contends that a December 8, 1996 letter from Erman Presley constituted a timely request for reconsideration, but the case record contains no evidence that Mr. Presley was authorized to represent appellant at the time this letter was sent.[6] The Office properly determined that appellant's application for review was not timely filed within the one-year time limitation set forth in 20 C.F.R. § 10.138(b)(2).

The Office, however, may not deny an application for review based solely on the grounds that the application was not timely filed. For a proper exercise of the discretionary authority granted under 5 U.S.C. § 8128(a), when an application for review is not timely filed, the Office must nevertheless undertake a limited review to determine whether the application shows "clear

---

[2] 5 U.S.C. § 8128(a).

[3] *Jesus D. Sanchez*, 41 ECAB 964 (1990).

[4] *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[5] *Larry J. Lilton*, 44 ECAB 243 (1992).

[6] 20 C.F.R. § 10.142 provides that an appointment of a representative "shall be made in writing or on the record at the hearing."

evidence of error" on the part of the Office.[7] Office procedures state that 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.[8]

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.[9] The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error.[10] Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.[11] It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.[12] This entails a limited review by the Office of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of the Office.[13] To show clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must be of sufficient probative value to *prima facie* shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of the Office decision.[14] The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of the Office such that the Office abused its discretion in denying merit review in the face of such evidence.[15]

The evidence appellant submitted in support of her request for reconsideration does not demonstrate clear evidence of error. The reports from Dr. Lisa Harris do not address whether the conditions Dr. Harris found on examination are causally related to appellant's employment injuries or to factors of her employment. In a report dated January 28, 1998, Dr. Mitesh Shah

---

[7] *Charles J. Prudencio*, 41 ECAB 499 (1990); *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (May 1996), states:

> "The term 'clear evidence of error' is intended to represent a difficult standard. The claimant must present evidence which on its face shows that the [Office] made a mistake (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error and would not require a review of the case on the Director's own motion."

[9] *See Dean D. Beets*, 43 ECAB 1153 (1992).

[10] *See Leona N. Travis*, 43 ECAB 227 (1991).

[11] *See Jesus D. Sanchez*, *supra* note 3.

[12] *See Leona N. Travis*, *supra* note 10.

[13] *Nelson T. Thompson*, 43 ECAB 919 (1992).

[14] *Leon D. Faidley*, *supra* note 4.

[15] *Gregory Griffin*, *supra* note 7.

noted that appellant incurred a work-related injury in 1974 and continued: "She then had pain on [July 12 to 13 1991] while at work copying forms and developed excruciating pain upon walking to put copies on a table and get more forms. Her job of sorting the rate mail out of baskets and moving it to and from different trays caused her to have flexion/extension motions in her hand which have aggravated her carpal tunnel problems, right shoulder and low back pain." In this report, Dr. Shah also stated: "[Appellant] has extensive degenerative changes for a woman her age and I think that this was probably a condition that developed or was accelerated by the type of job she did." In a report dated May 14, 1998, Dr. Shah stated that "years of repetitive-type motions combined with hours of sitting without use of back support has caused lumbar spine condition to deteriorate as well as cause recurrent carpal tunnel pain (bilaterally) and recurrent right shoulder pain." These reports from Dr. Shah are insufficient to demonstrate clear evidence of error because they contain no rationale for the doctor's opinion supporting causal relation.[16] For this reason, they do not raise a substantial question concerning the correctness of the Office's decision.

The decision of the Office of Workers' Compensation Programs dated September 25, 1998 is affirmed.

Dated, Washington, D.C.
May 5, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

[16] Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).