

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT S. HUGGINS and PEACE CORPS,
Swaziland

*Docket No. 99-1666; Oral Argument Held March 14, 2000;
Issued May 19, 2000*

Appearances: *Robert S. Huggins, pro se; Paul J. Klingenberg, Esq.*, for the Director, Office of
Workers' Compensation Programs.

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's requests 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 decisions the Board may review on appeal are the August 19, 1998 and January 25, 1999 decisions, which denied appellant's requests for reconsideration, because they are the only final Office decisions issued within one year of the filing of appellant's appeal on April 1, 1999.¹

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 the present case, the Office accepted that appellant sustained a lumbar sprain, sciatica and a herniated disc on July 9, 1993 in the performance of his federal employment and awarded him compensation. By decision dated May 2, 1995, the Office reviewed the merits of the case and terminated his benefits because it found that he no longer had residuals from his accepted injuries. Following appellant's June 27, 1995 request for reconsideration, the Office reviewed the merits of the case in a decision dated October 26, 1995 and denied modification of its prior decision. He subsequently requested reconsideration on November 10, 1995. By decision dated January 30, 1996, the Office again reviewed the merits of the claim and denied modification. On February 12, 1996 appellant requested reconsideration. The Office, however, denied reconsideration inasmuch as appellant neither raised substantive legal questions nor submitted new, relevant medical evidence. He requested reconsideration on March 22, 1996. In a decision dated May 9, 1996, the Office reviewed the merits of the claim and denied modification. On July 18, 1996 appellant requested reconsideration. By decision dated September 19, 1996, the Office denied reconsideration because the evidence in support of the request for review was cumulative and irrelevant.

On January 3, 1997 appellant requested reconsideration. By decision dated March 5, 1997, the Office again reviewed the merits of the claim and denied modification. Appellant appealed this decision to the Board on March 25, 1997, but requested that his appeal be withdrawn in a letter received April 2, 1997. On May 1, 1997 appellant requested reconsideration. On May 22, 1997 the Board dismissed appellant's appeal pursuant to his

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).

request. By decision dated May 27, 1997, the Office denied the application for review because the evidence submitted in its support was irrelevant and immaterial. On May 28, 1997 appellant again requested reconsideration. On June 12, 1997 he filed an application for review of the May 27, 1997 decision with the Board. In a letter dated February 19, 1998, appellant withdrew his appeal and requested reconsideration. On May 22, 1998 the Board dismissed his appeal. On August 19, 1998, the Office denied reconsideration because appellant's February 19, 1998 reconsideration request was untimely as it was not filed within one year of its decision dated May 9, 1996 and because appellant failed to establish clear evidence of error. In a letter dated September 3, 1998, appellant again requested reconsideration. By decision dated January 25, 1999, the Office denied reconsideration because his September 3, 1998 reconsideration request was untimely as it was not filed within one year of its merit decision dated May 9, 1996 and because appellant failed to establish clear evidence of error.

The Board finds that appellant's February 19, 1998 request for reconsideration was timely filed because it was submitted within one year of the Office's last merit decision of March 5, 1997. In its August 19, 1998 decision, the Office mistakenly considered its May 9, 1996 decision as the last merit decision of record and, therefore, erred in finding that the February 18, 1998 reconsideration request was untimely. Thus, the Board finds that the Office improperly denied appellant's February 19, 1998 request for reconsideration. 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 the evidence under the proper standard of review.¹¹

¹¹ The Board notes that, on remand, the Office should reconstruct and reassemble the case record because the evidence contained within it is disorganized and not contained on spindles.

Accordingly, the January 25, 1999 and February 19, 1998 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further proceedings consistent with this opinion.

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

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member