U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANET R. BROWNLEE and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Dallas, TX

Docket No. 99-1248; Submitted on the Record;
Issued November 27, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for merit review under 5 U.S.C. § 8128(a) on the grounds that appellant's request for reconsideration was untimely filed and failed to present clear evidence of error.

The Board has duly reviewed the case record in this appeal and finds that the Office did not abuse its discretion in refusing to reopen appellant's case for merit review under 5 U.S.C. § 8128(a) on the grounds that appellant's request for reconsideration was untimely filed and failed to present clear evidence of error.

On November 2, 1992 appellant, then a 54-year-old registered nurse, filed a traumatic injury claim (Form CA-1) assigned number A16-0216808 alleging that on October 22, 1992 she experienced severe pain in both knees and depression.

By decision dated January 20, 1993, the Office found the evidence of record insufficient to establish that appellant sustained an injury as alleged. In an accompanying memorandum, the Office found the evidence of record sufficient to establish that the claimed event, incident or exposure occurred at the time, place and in the manner alleged, but insufficient to establish a medical condition resulting from the accepted trauma or exposure.

In a September 2, 1998 letter, appellant requested reconsideration of the Office's decision accompanied by medical evidence.

By decision dated September 17, 1998, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that it was untimely filed and that it did not establish clear evidence of error.

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] Inasmuch as appellant filed her appeal with the Board on February 17, 1999, the only decision properly before the Board is the Office's September 17, 1998 decision denying appellant's request for a review of the merits of its January 20, 1993 decision.

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] The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, the Office has stated that it 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.[4] The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a).[5]

In this case, the Office properly determined that appellant failed to file a timely application for review. In implementing the one-year time limitation, the Office's procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues.[6] The Office issued its last merit decision in this case on January 20, 1993 wherein it found that appellant had failed to establish an injury as alleged. Inasmuch as appellant's September 2, 1998 request for reconsideration was made outside the one-year time limitation, the Board finds that it was untimely filed.

In those cases where a request for reconsideration is not timely filed, the Board has held, however, that the Office must nevertheless undertake a limited review of the case to determine whether there is clear evidence of error pursuant to the untimely request.[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]

---

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

[2] 5 U.S.C. § 8128(a).

[3] *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[4] 20 C.F.R. § 10.138(b)(2).

[5] *See Jesus D. Sanchez, supra* note 3; *Leon D. Faidley, Jr., supra* note 3.

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602(3)(b) (May 1996); *Larry L. Lilton*, 44 ECAB 243 (1992).

[7] *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(d) (May 1996).

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]

In support of her request for reconsideration, appellant submitted medical treatment notes dated November 3, 1992, a January 15, 1993 medical report and a February 1, 1994 attending physician's report (Form CA-20) from Dr. Lewis M. Pincus, an internist, which were previously of record. Evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.[13]

Appellant also submitted the employing establishment's December 2 and 3, 1993 medical treatment notes addressing her reaction to her interaction with coworkers, specifically her thoughts of shooting the chief of nursing and two top administrators because they knew "what was going on." These treatment notes addressed appellant's reaction to an assessment of her performance and to being charged absent without leave. This evidence does not raise a substantial question as to the correctness of the Office's January 20, 1993 decision that appellant's claimed emotional condition was not causally related to compensable factors of employment.

Appellant submitted a December 15, 1993 medical report of Dr. Rodger D. Kobes, a Board-certified psychologist and neurologist, noting that she was admitted to the hospital on December 2, 1993 for symptoms of depression, mood swings, irritability and agitation. The report indicated that appellant's symptoms were "most likely" related to stressors at work. This medical report is also insufficient to establish that the Office's denial of her claim was in error. The Board, therefore, finds that appellant has failed to establish clear evidence of error.

For these reasons, the evidence submitted by appellant on reconsideration fails to manifest on its face that the Office committed clear evidence of error in its January 20, 1993 merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim.

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

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

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

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

[13] *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

The September 17, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 27, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member