

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLENDA C. LYNN and U.S. POSTAL SERVICE,
POST OFFICE, Nauvoo, AL

*Docket No. 00-2262; Submitted on the Record;
Issued August 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's May 11, 2000 request for reconsideration on the grounds that it was untimely and failed to present clear evidence of error.

In a decision dated April 15, 1999, an Office hearing representative affirmed the termination of appellant's compensation benefits under 5 U.S.C. § 8106 on the grounds that she declined an offer of suitable work. The hearing representative noted that a conflict in medical opinion existed between appellant's attending psychiatrist, Dr. William Howell and the Office referral psychiatrist, Dr. Charles Ford. To resolve the conflict, the Office referred appellant to a referee medical specialist, Dr. Andrew G. Hodges. The hearing representative found that the opinion of Dr. Hodges represented the weight of the medical opinion evidence on the issue of continuing injury-related disability due to a psychiatric disorder and supported appellant's ability to perform the duties of the offered position. The hearing representative further found that although Dr. Howell continued to report that appellant remained unable to work due to her psychiatric condition, his opinion was not sufficient to overcome the weight of Dr. Hodges's opinion.

In attached appeal rights, also dated April 15, 1999, appellant was notified that any request for reconsideration must be filed within one year of the date of the attached decision.

Appellant requested reconsideration on July 2, 1999 and advised the Office of her intent to submit additional information from her physicians as soon as those statements could be completed and transcribed.

In a decision dated October 4, 1999, the Office denied appellant's July 2, 1999 request for reconsideration because it neither raised substantive legal questions nor included new and relevant evidence. The Office reminded appellant that any future request for reconsideration must be made within one year of the most recent merit decision dated April 15, 1999.

On May 11, 2000 appellant again requested reconsideration. In support thereof, she submitted a statement from her attending psychiatrist, Dr. Howell, who testified that appellant was unable to return to any employment.

In a decision dated June 19, 2000, the Office denied appellant's May 11, 2000 request for reconsideration because it was untimely and failed to present clear evidence of error.

The Board finds that the Office properly denied appellant's May 11, 2000 request for reconsideration.

Section 10.607 of the Code of Federal Regulations provides that an application for reconsideration must be sent within one year of the date of the Office decision for which review is sought. The Office will consider an untimely application only if the application demonstrates clear evidence of error on the part of the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.¹

To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by the Office.² The evidence must be positive, precise and explicit and must manifest on its face that the Office committed an error.³ Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.⁴ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.⁵ 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.⁶ 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.⁷ 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 a merit review in the face of such evidence.⁸

The most recent merit decision by the Office was the hearing representative's April 15, 1999 decision, affirming the termination of appellant's compensation benefits under 5 U.S.C.

¹ 20 C.F.R. § 10.607.

² See *Dean D. Beets*, 43 ECAB 1153 (1992).

³ See *Leona N. Travis*, 43 ECAB 227 (1991).

⁴ See *Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁵ See *Leona N. Travis*, *supra* note 3.

⁶ *Nelson T. Thompson*, 43 ECAB 919 (1992).

⁷ *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁸ *Gregory Griffin*, 41 ECAB 458, 466 (1990).

§ 8106. Because appellant did not send her May 11, 2000 request for reconsideration within one year of the date of this decision, her request is untimely.

To support her May 11, 2000 request for reconsideration, appellant submitted the sworn testimony of her attending psychiatrist, Dr. Howell. He, however, had already expressed his opinion on whether appellant continued to suffer disabling psychiatric residuals of her accepted employment injury. In fact, Dr. Howell's opinion had created a conflict with that given by the Office referral psychiatrist, Dr. Ford. Pursuant to 5 U.S.C. § 8123(a), the Office resolved this conflict by obtaining the opinion of a referee medical specialist, Dr. Hodges. Because the referee medical specialist resolved the issue raised by Drs. Howell and Ford, any further report or testimony by Dr. Howell on appellant's disability status or on the suitability of the offered position would be essentially repetitive and would not establish on its face that the Office's decision was erroneous.

Because appellant's May 11, 2000 request for reconsideration was untimely and failed to establish on its face that the Office's April 15, 1999 decision was erroneous, the Office properly denied a merit review of her claim.

The June 19, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 6, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member