

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL B. STINER and U.S. POSTAL SERVICE,  
POST OFFICE, Decatur, IL

*Docket No. 00-2302; Submitted on the Record;  
Issued August 27, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

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

In a decision dated September 9, 1998, the Office determined that the evidence of record established that appellant had no continuing disability due to his accepted February 7, 1994 employment injury and was capable of returning to his usual job without any restrictions. The Office found that the July 15, 1998 report by Dr. David J. Fletcher, an attending physician Board-certified in occupational medicine and public health and general preventive medicine, indicated that appellant was capable of performing his usual position. In his report, Dr. Fletcher noted appellant's clinical examination showed he was neurologically intact, had good flexibility and good range of motion. Furthermore, he noted that appellant's "work conditioning showed he had a physical capacity to do his job." Thus, the Office concluded that appellant was capable of performing his usual position without restriction and had no continuing disability due to his accepted employment injury and terminated his medical benefits effective July 15, 1998.

In an undated letter received by the Office, on February 8, 2000, appellant requested reconsideration and indicated that he had written previously requesting reconsideration.<sup>1</sup>

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<sup>1</sup> In his letter, appellant requests reconsideration of the termination of his compensation benefits and denial of a schedule award claim. He also stated that had written several times requesting review. A review of the record indicates that the Office informed appellant in a report of telephone call dated April 26, 1999 that his schedule award claim had been denied on September 9, 1998. In a letter dated April 26, 1999, the Office enclosed the September 9, 1998 decision which denied him further compensation as he had no permanent residuals due to his employment injury and that his schedule award claim was denied in the same decision. The record contains no evidence supporting appellant's allegation that he had previously written letters requesting reconsideration of the termination of his benefits and denial of his schedule award claim.

In a decision dated March 3, 2000, the Office denied appellant's request for reconsideration on the grounds that it was untimely and failed to present clear evidence that the Office's September 9, 1998 decision was erroneous.

The Board finds that the Office properly denied appellant's request for reconsideration on the grounds that it was untimely filed and failed to present clear evidence of error.

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.<sup>2</sup>

Appellant did not send his undated request for reconsideration within one year of the Office's September 9, 1998 decision denying his claim. The Office received his request on February 8, 2000 showing that appellant did not make his request in a timely manner.

The question, therefore, is whether appellant's request establishes on its face that the Office's March 3, 2000 holding that appellant's request was untimely and failed to establish clear evidence of error was erroneous. The Board has reviewed his request and finds that appellant has not established clear evidence of error. Appellant made allegations that Dr. Fletcher was biased and his opinion self-serving. His untimely request for reconsideration does not establish that the Office's September 9, 1998 decision was erroneous.

The decision of the Office of Workers' Compensation Programs dated March 3, 2000 is hereby affirmed.

Dated, Washington, DC  
August 27, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>2</sup> 20 C.F.R. § 10.607.