U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK P. BILLBROUGH, SR. and U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Wilmington, DE

Docket No. 00-2748; Submitted on the Record;
Issued August 27, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration, received by the Office on April 20, 2000, was untimely filed and did not present clear evidence of error.

The Board has duly reviewed the case record and concludes that appellant's request for reconsideration, received by the Office on April 20, 2000, was untimely filed and did not present clear evidence of error.

Section 8128(a) of the Federal Employees' Compensation Act[1] does not entitle a claimant to a review of an Office decision as a matter of right.[2] The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a).[3] 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 5 U.S.C. § 8128(a).[5]

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[1] 5 U.S.C. § 8128(a).

[2] *Veletta C. Coleman*, 48 ECAB 367 (1997).

[3] Thus, although it is a matter of discretion on the part of the Office whether to review an award for or against payment of compensation, the Office has stated that a claimant may obtain review of the merits of a claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office. 20 C.F.R. § 10.606(b).

[4] 20 C.F.R. § 10.607(a). The Board has concurred in the Office's limitation of its discretionary authority; *see Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

[5] *See Veletta C. Coleman*, *supra* note 2

The Office properly determined in this case 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 27, 1999 wherein an Office hearing representative affirmed as modified the Office's April 20, 1998 decision denying appellant's stress claim. The Office hearing representative found that appellant had established at least one compensable factor of employment, that the employing establishment erred in issuing a February 19, 1998 letter of warning for the misuse of family leave, but failed to submit sufficient medical evidence to support a finding that this factor contributed to his angina or to the development of any emotional condition.

By letter dated February 15, 1999, appellant requested reconsideration of the Office's decision and submitted additional evidence in support of his request. In a decision dated April 12, 1999, the Office denied appellant's request on the grounds that he neither raised substantive legal questions nor included new and relevant evidence.

By letter dated April 14, 2000, and received by the Office on April 20, 2000, appellant again requested reconsideration of the Office's prior decision. In a decision dated June 29, 2000, the Office denied appellant's request for reconsideration on the basis that it was not filed within the one-year time limit set forth by 20 C.F.R. § 10.607(a) and that it did not present clear evidence of error.

The Board finds that the Office properly determined that appellant failed to file a timely application for review. The Office issued its last merit decision in this case on January 27, 1999, wherein the Office hearing representative affirmed as modified the Office's April 20, 1998 decision denying appellant's claim. As appellant's April 20, 2000 request for reconsideration was made outside the one-year time limitation, which began the day after January 27, 1999, appellant's request for reconsideration was untimely.

In those cases where a request for reconsideration is not timely filed, the Board has held 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. § 10.606(a), 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. The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error. Evidence which does not raise a

[6] *Veletta C. Coleman*, *supra* note 2; *Larry L. Lilton*, 44 ECAB 243 (1992).

[7] *Veletta C. Coleman*, *supra* note 2*; Gregory Griffin*, *supra* note 4.

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

substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. 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. 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. 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.[9]

In support of his April 20, 2000 request for reconsideration, appellant submitted numerous duplicate copies of evidence already contained in the record and previously review by the Office. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[10] Appellant also submitted a copy of Executive Order 5396, issued July 17, 1930, providing that special leave of absence shall be given to disabled veterans in need of medical treatment, as well as documents pertaining to events that took place in 1997. The Office already accepted, however, that the employing establishment erred in issuing a letter of warning regarding appellant's misuse of leave on February 19, 1998. Therefore, the only issue remaining in this claim is whether the record contains sufficient medical evidence to establish that the employing establishment's error contributed to appellant's stress-related angina, or to the development of any other emotional condition. Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[11] Finally, appellant submitted medical reports from his treating physicians dated January 20 and February 20, 1997, January 21 and 26, 1999, pertaining solely to the care and treatment of appellant's right foot dermatitis and right great toe crush injury. As these reports do not address the cause of appellant's February 19, 1998 episode of angina, or otherwise discuss any other emotional condition appellant may have developed as a result of his employment, these reports are insufficient to establish that the Office erred in denying appellant's claim.[12]

The Office's June 29, 2000 decision properly determined that appellant had not presented clear evidence of error, as appellant did not submit any medical or factual evidence sufficient to show that the Office erred in its prior decisions.

[9] *Veletta C. Coleman*, *supra* note 2.

[10] *Linda I. Sprague*, 48 ECAB 386 (1997).

[11] *Id.*

[12] *Id.*

The decision of the Office of Workers' Compensation Programs dated June 29, 2000 is hereby affirmed.

Dated, Washington, DC
August 27, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member