

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of LYNNE JONES and U.S. POSTAL SERVICE,  
POST OFFICE, Inola, OK

*Docket No. 00-2235; Submitted on the Record;  
Issued June 8, 2001*

---

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was untimely filed and did not demonstrate clear evidence of error.

The only Office decision before the Board on this appeal is the May 1, 2000 decision denying appellant's request for reconsideration. Since more than one year has elapsed between the date of the Office's most recent merit decision on January 26, 1999, denying appellant's claim for compensation and the filing of appellant's appeal on June 24, 2000, the Board lacks jurisdiction to review the merits of appellant's claim.<sup>1</sup>

The Board finds that the Office acted within its discretion in denying appellant's request for reconsideration as untimely filed and lacking clear evidence of error.

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.<sup>2</sup> 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).<sup>3</sup>

The Office properly found, in its May 1, 2000 decision, that the one-year time limit for filing a request for reconsideration of the Office's January 26, 1999 decision expired on January 26, 2000 and that the request for reconsideration dated March 29, 2000 was untimely.<sup>4</sup>

---

<sup>1</sup> 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

<sup>2</sup> 20 C.F.R. § 10.607(a).

<sup>3</sup> *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>4</sup> The Board notes that appellant's request for reconsideration was dated March 29, 2000, not April 3, 2000.

In support of her request for reconsideration, appellant stated that she did not know about the Office's decision denying her claim until March 2000. Under the mailbox rule, in the absence of evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have arrived at the mailing address in due course.<sup>5</sup> The Office's January 26, 1999 decision was addressed to appellant at 1114B E. 68<sup>th</sup> Street, Tulsa, OK, 74133, appellant's address of record, and is therefore presumed to have arrived in due course.

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.<sup>6</sup> 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. § 10.607, if the claimant's application for review shows "clear evidence of error" on the part of the Office.<sup>7</sup>

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.<sup>8</sup> The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error.<sup>9</sup> Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.<sup>10</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup>

---

<sup>5</sup> *Marlon G. Massey*, 49 ECAB 650 (1998).

<sup>6</sup> *Gregory Griffin*, 41 ECAB 186 (1989); *petition for recon. denied*, 41 ECAB 458 (1990).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (May 1991).

<sup>8</sup> *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>9</sup> *Leona N. Travis*, 43 ECAB 227 (1991).

<sup>10</sup> *Jesus D. Sanchez*, *supra* note 3.

<sup>11</sup> *Leona N. Travis*, *supra* note 9.

<sup>12</sup> *Nelson T. Thompson*, 43 ECAB 919 (1992).

<sup>13</sup> *Leon D. Faidley, Jr.*, *supra* note 3.

<sup>14</sup> *Gregory Griffin*, *supra* note 6.

In support of her March 29, 2000 request for reconsideration, appellant submitted a radiology report dated December 11, 1998; a lumbar spine report dated November 17 and December 16, 1998; a magnetic resonance imaging (MRI) scan of the lumbar spine dated November 20, 1998; three letters from Dr. Christopher G. Covington, a Board-certified neurological surgeon, dated December 1, 1998, January 5 and August 3, 1999; a final report on the MRI scan; a report from Dr. Robert A. Paulsen, a Board-certified family practitioner, dated November 17, 1998; and progress notes from Dr. Mark D. Rowland, a Board-certified internist.

While Dr. Covington opined that appellant's ruptured disc was a direct result of her work injury, he did not support his statement with findings or medical rationale. Thus his report does not raise a substantial question as to the correctness of the denial of appellant's claim and does not establish clear evidence of error regarding the denial of appellant's claim.

Appellant also submitted copies of certified mail, an authorization report from her employer, a copy of a letter dated January 11, 1999 from appellant to the Office, copies of insurance bills, an appointment note, and a copy of the Office's letter dated December 21, 1998. This remaining evidence does not address causal relationship at all, and is therefore not of sufficient probative value to *prima facie* shift the weight of the evidence.<sup>15</sup>

As appellant's request for reconsideration was untimely filed and did not establish clear evidence of error, the Office properly denied reconsideration.

The May 1, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
June 8, 2001

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

---

<sup>15</sup> Appellant's December 24, 1999 letter responding to the Office's December 21, 1999 request for more information described the history of injury and noted an "attachment." The letter was dated as received on January 15, 2000 but no attachment is in the file.