

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORETTA BRADLEY and U.S. POSTAL SERVICE,
POST OFFICE, Midflorida, FL

*Docket No. 01-273; Submitted on the Record;
Issued September 7, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly found that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly determined that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

The Board's jurisdiction to consider and decide appeals from a final decision of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed the appeal with the Board on October 17, 2000, the only decision before the Board is the Office's September 27, 2000 decision, denying appellant's request for reconsideration.

The Office accepted appellant's claim for a left knee contusion, right hip contusion and cervical strain. In an attending physician's report dated April 30, 1995, appellant's treating physician, Dr. John E. Britt, a Board-certified orthopedic surgeon, diagnosed cervical strain and stated that appellant could resume her regular work on May 5, 1995. In a report dated May 3, 1995, Dr. Britt stated that appellant had multiple complaints of diffuse pain and did not wish to return to work. He stated that the x-rays and magnetic resonance imaging (MRI) scan were unremarkable. Dr. Britt concluded that appellant could return to full employment without restriction. In an attending physician's supplemental report dated May 14, 1995, Dr. Britt stated that he last examined appellant on May 3, 1995, appellant had no impairment, the cervical strain was resolved and appellant was able to return to regular work on May 3, 1995.

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

By decision dated February 6, 1996, the Office terminated appellant's compensation benefits, effective May 5, 1995, stating that the weight of the medical evidence established that appellant's disability resulting from the March 7, 1995 employment injury had ceased. By letter dated February 14, 1996, appellant requested an oral hearing before an Office hearing representative which was held on October 24, 1996. By decision dated January 6, 1997, the Office hearing representative affirmed the Office's February 9, 1996 decision.

By letter dated September 28, 1998, appellant requested reconsideration of the Office's decision and submitted additional evidence including Dr. Britt's May 3, 1995 progress note, May 14, 1995 attending physician's report and a videotaped disposition of Dr. Britt dated September 11, 1997. In her request, appellant stated that, in his deposition testimony, Dr. Britt stated that he did not examine appellant on May 3, 1995. Appellant contended that Dr. Britt may have misled the Office into thinking he examined appellant on that date based on the May 14, 1995 report in which he indicated that he examined appellant on May 3, 1995 and on the May 3, 1995 report itself which might suggest he examined appellant on that date. In his deposition, Dr. Britt stated that he did not examine appellant on May 3, 1995. He reiterated his opinion that, as of May 3, 1995, based on his prior physical examination of appellant on April 21, 1995, his review of the x-rays and MRI scan, appellant could return to work without restrictions. Appellant also submitted evidence related to the Board's Order Dismissing Appeal dated April 13, 1998, dismissing appellant's appeal No. 97-1209, pursuant to appellant's request to pursue reconsideration of the Office's decision before the Office.

By decision dated October 27, 1998, the Office denied appellant's request for reconsideration, stating that she did not establish clear evidence of error.

Appellant appealed to the Board but in an order remanding case dated August 22, 2000, the Board remanded the case for reconstruction of certain parts of the record.

By decision dated September 27, 2000, the Office reissued a *de novo* decision on appellant's September 28, 1998 request for reconsideration, stating that the documents the Board identified as missing were in the record and reconstruction was not necessary, and redened appellant's reconsideration request because appellant did not establish clear evidence of error.

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).² The Office will not review a decision denying or terminating benefits unless the application for review is filed within one year of the date of that decision.³ The Office will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error by the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.⁴

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.607(a). *See also John Crawford*, 52 ECAB _____ (Docket No. 01-273 issued June 14, 2001); *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

⁴ 20 C.F.R. § 10.607(b); *see Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

The Board finds that, since more than one year has elapsed from the date of the Office's January 6, 1997 merit decision to the date that appellant's request for reconsideration was filed, September 28, 1998, appellant's request for reconsideration is untimely. The Board further finds that the evidence submitted by appellant in support of such request does not raise a substantial question as to the correctness of the Office's January 6, 1997 decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim.

In this case, the evidence appellant submitted related to the Board's order dismissing appeal No. 97-1209 is not relevant as it shows no error in the Office's evaluation of the evidence. Further, Dr. Britt's May 3 and May 14, 1995 reports were previously submitted and considered by the Office. Dr. Britt's September 11, 1997 deposition in which he stated he did not examine appellant on May 3, 1995 and last examined her on April 21, 1995, and reiterated his opinion that as of May 3, 1995 appellant could return to work without restriction does not establish any error by the Office. Appellant has therefore failed to establish that the Office erred in terminating her compensation benefits.

The September 27, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 7, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member