

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AMEENAH A. AHMAD and U.S. POSTAL SERVICE,
POST OFFICE, White Cloud, MI

*Docket No. 01-1805; Submitted on the Record;
Issued April 8, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
COLLEEN DUFFY KIKO

The issues are: (1) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for further review of the merits of her case under 5 U.S.C. § 8128(a); and (2) whether the Office properly found that appellant's October 16, 2000 request for reconsideration was not timely filed and did not demonstrate clear evidence of error.

On August 26, 1998 appellant, then 50 years old, filed an occupational disease claim for stress, depression, anxiety and emotional distress that she attributed to harassment in her work as a postmaster. Appellant's disability retirement from this position was effective February 8, 1997.

By letter dated November 2, 1998, the Office advised appellant that it would not readjudicate the claim for an emotional condition it had denied in 1996 and that it was her burden to establish that her emotional condition was related to factors of her employment from June 1996 until she retired in February 1997.

By decision dated December 23, 1998, the Office found that appellant failed to substantiate her allegations of harassment subsequent to June 1996, that she had failed to establish any error or abuse in the employing establishment's administrative or personnel matters and that she had not substantiated any work-connected events or elements.

By letter dated April 13, 1999, appellant requested reconsideration, contending that her car fire in April 1995 was employment related.

By decision dated May 3, 1999, the Office found that, as appellant's car fire was adjudicated in a previous case, the argument regarding the car fire was immaterial. The Office found that appellant had not submitted any new and relevant evidence and that her request for reconsideration was not sufficient to warrant review of its prior decision.

By letter dated May 3, 2000, appellant requested reconsideration, again contending that her car fire was employment related. She submitted an affidavit dated May 6, 1997 from one of her Equal Employment Opportunity (EEO) complaints.

By decision dated July 10, 2000, the Office found: “Because your letter neither raised substantive legal questions nor included new and relevant evidence, it is insufficient to warrant a review of our prior decision under case number 09-0445878 at this time.” The Office noted that appellant’s claim for a car fire on April 28, 1995 under claim number 09-466100 had been denied for the reason that it was not timely filed and that if she disagreed with that finding, she must submit new and relevant evidence pertaining to that issue.

By undated letter received October 16, 2000, appellant requested reconsideration, contending that on May 28, 1996 her supervisor stated that she must stay on sick leave and that, after her fitness-for-duty examination, she should have been offered another position at the employing establishment.

By decision dated November 30, 2000, the Office found that appellant’s request for reconsideration was not timely filed and did not demonstrate clear evidence of error.

The only Office decisions before the Board on this appeal are the Office’s July 10, 2000 decision, finding that appellant’s application for review was not sufficient to warrant review of its prior decision and the Office’s November 30, 2000 decision, denying 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. Since more than one year elapsed between the date of the Office’s most recent merit decision on December 23, 1998 and the filing of appellant’s appeal on July 10, 2001, the Board lacks jurisdiction to review the merits of appellant’s claim.¹

The Board finds that the Office properly refused to reopen appellant’s claim for further review of the merits of her case under 5 U.S.C. § 8128(a).

Section 8128(a) of the Federal Employees’ Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by

¹ 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 final decision being appealed.

advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. 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.² Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.³

Appellant's May 3, 2000 request for reconsideration argued that her April 1995 automobile accident occurred in the performance of duty. As this injury is not the subject of the present claim but rather was adjudicated in another claim, her argument does not address the particular issue involved and cannot constitute a basis for reopening appellant's case. Her May 6, 1997 affidavit from an EEO complaint addresses the issues in the present case, but is repetitive of contentions previously raised by appellant and considered by the Office. Her May 3, 2000 request for reconsideration did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office. The Office properly refused to reopen appellant's case for further review of the merits of her claim.

The Board finds that the Office properly found that appellant's October 16, 2000 request for reconsideration was not timely filed and did not demonstrate clear evidence of error.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, 20 C.F.R. § 10.607(a) provides: "An application for reconsideration must be sent within one year of the date of the Office's decision for which review is sought." The Board has found that the imposition of this one-year limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).⁴

In the present case, the most recent merit decision by the Office was issued on December 23, 1998. Appellant's request for reconsideration received by the Office on October 16, 2000 was not filed within one year of this decision and the Office's July 10, 2000 nonmerit decision does not extend the one-year time limitation period.⁵ The Office properly determined that appellant's application for review was not timely filed within the one-year time limitation set forth in 20 C.F.R. § 10.607(a).

The Office, however, may not deny an application for review based solely on the grounds that the application was not timely filed. For a proper exercise of the discretionary authority granted under 5 U.S.C. § 8128(a), when an application for review is not timely filed, the Office

² *Eugene F. Butler*, 36 ECAB 393 (1984).

³ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁴ *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁵ *Naomi L. Rhodes*, 43 ECAB 645 (1992).

must nevertheless undertake a limited review to determine whether the application shows “clear evidence of error” on the part of the Office.⁶ 20 C.F.R. § 607(b) provides: “[The] Office will consider an untimely application for reconsideration 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.”

Appellant’s undated request for reconsideration received by the Office on October 16, 2000 was not accompanied by any new evidence and the contentions raised therein did not relate to the Office’s December 23, 1998 decision. Appellant did not demonstrate any error in the Office’s December 23, 1998 decision.

The November 30 and July 10, 2000 decisions of the Office of Workers’ Compensation Programs are affirmed.

Dated, Washington, DC
April 8, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

⁶ *Charles J. Prudencio*, 41 ECAB 499 (1990); *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).