

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VELMA HAMILTON and DEPARTMENT OF THE NAVY,
MARINE CORPS, AIR STATION, Cherry Point, NC

*Docket No. 01-1572; Submitted on the Record;
Issued January 23, 2002*

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

This case has previously been before the Board.¹ Prior to the Board appeal, on April 10, 1989 appellant, then a 30-year-old stock worker, filed a traumatic injury claim alleging that she injured her upper and lower back on February 6, 1989 while pulling a loaded pallet. On May 9, 1989 the Office accepted the claim for lumbar strain. Appellant immediately stopped work following the injury.

On May 17, 1989 appellant submitted a claim for compensation on account of her traumatic injury (Form CA-7) alleging continuing disability beginning February 15, 1989. By decision dated September 15, 1989, the Office denied appellant's claim for compensation after February 14, 1989 on the grounds that the medical evidence did not substantiate that the accepted lumbar strain of February 6, 1989 caused disability for work after February 14, 1989. Appellant was informed of her rights to appeal and time parameters with the Office decision.

Appellant subsequently requested reconsideration on December 5, 1990, which was denied by the Office on December 28, 1990 as untimely, and the Office further determined that appellant failed to establish clear evidence of error. Appellant thereafter appealed to the Board and a decision was issued October 28, 1991 affirming the prior decision, finding that the Office did not abuse its discretion in denying appellant's untimely request for reconsideration and again that appellant failed to present clear evidence of error.

In a letter dated March 2, 2001 received March 12, 2001, appellant through her state congresswoman requested reconsideration and submitted additional evidence. By decision dated

¹ Docket No. 91-798.

April 20, 2001, 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 15, 1989 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's 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.²

Appellant did not send her request for reconsideration within one year of the Office's September 15, 1989 decision denying her claim for continuing disability. The Office received her request through a member of congress, which was received on March 12, 2001, and the inclusion of medical documents dated from April 14, 1998 through December 18, 2000 shows that appellant did not make her request in a timely manner.

The question, therefore, is whether appellant's request establishes on its face that the Office's September 15, 1989 decision was erroneous. The Board has reviewed the material submitted by appellant in support of her request and finds that she has not established clear evidence of error. The medical record previously reflected that appellant was released for regular duty on February 15, 1989 pursuant to a duty status report submitted by Dr. Harold Vandersea, a Board-certified orthopedic surgeon, on February 14, 1989. The record further reflects that appellant was evaluated and treated by various physicians subsequent to February 15, 1989 for complaints of back pain and weakness, however, none of the reports establish a condition causing disability following February 14, 1989 related to the work injury. It is upon this evidence that the Office relied upon in denying appellant's claim for disability after February 14, 1989 on September 15, 1989.

Accompanying the March 12, 2001 decision, appellant submitted numerous medical notes dated from April 14, 1998 through December 18, 2000, however, she did not submit a medical opinion explaining how her diagnosed lumbar strain caused additional disability after February 14, 1989. The Office noted these same deficiencies in its September 15, 1989 decision. Appellant's untimely request for reconsideration does not cure these deficiencies and fails to establish that the Office's September 15, 1989 decision was erroneous.

² 20 C.F.R. § 10.607.

The April 20, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 23, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member