

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELLAMAE J. JULSON and U.S. POSTAL SERVICE,
POST OFFICE, Punta Gorda, FL

*Docket No. 01-2074; Submitted on the Record;
Issued July 23, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's November 1, 2000 request for reconsideration.

This case is on appeal before the Board for the second time. By decision dated January 14, 1997, the Board affirmed the May 9, 1994 decision of the Office. In that decision, the Office properly determined that appellant received overpayments in the amount of \$11,188.91 and \$6,628.47. Additionally, the Office found that appellant was not entitled to a waiver of the overpayment.¹

On November 1, 2000 appellant requested reconsideration. By decision dated July 26, 2001, the Office denied appellant's request for reconsideration on the basis that the request was untimely filed and appellant failed to present clear evidence of error.

The Board finds that the Office properly denied appellant's November 1, 2000 request for reconsideration.

Section 8128(a) of the Federal Employees' Compensation Act² does not entitle a claimant to a review of an Office decision as a matter of right.³ This section vests the Office with discretionary authority to determine whether it will review an award for or against payment of compensation.⁴ The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁵ One such limitation is that the application for

¹ Docket No. 94-2423. The Board's January 14, 1997 decision is incorporated herein by reference.

² 5 U.S.C. § 8128(a).

³ *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁴ Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.607 (1999).

reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁶

In this particular case, the one-year time limitation begins to toll the day following the issuance of the Board's January 14, 1997 decision. As appellant's request for reconsideration was dated November 1, 2000, she is not entitled to review of her claim as a matter of right.⁷

In those instances when a request for reconsideration is not timely filed, the Office will undertake a limited review to determine whether the application presents "clear evidence of error" on the part of the Office in its "most recent merit decision."⁸ In this regard, the Office will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.⁹

To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by the Office.¹⁰ The evidence must be positive, precise and explicit, and it must be apparent on its face that the Office committed an error.¹¹ Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.¹² It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹³ 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.¹⁴

In the instant case, appellant failed to demonstrate clear evidence of error. The evidence that accompanied appellant's November 1, 2000 request for reconsideration consisted of a September 4, 2000 financial statement. The recent financial statement outlined appellant's income and expenses for the period July 1 through 31, 2000. Appellant's representative alleged error on the basis that the financial information previously relied upon by the Office and the Board was no longer valid. Evidence of a subsequent change in appellant's financial circumstances does not constitute clear evidence of error. In fact, this evidence does not demonstrate any error on the part of the Office in determining that appellant was not entitled to waiver of recovery of the overpayment based on financial information available in 1994.

⁶ 20 C.F.R § 10.607(a) (1999).

⁷ Although the Board's January 14, 1997 decision tolls the time period for purposes of determining whether appellant filed a timely request for reconsideration, the Office does not have authority to review the Board's January 14, 1997 decision. See *Theresa Johnason*, 50 ECAB 317, 318 (1999).

⁸ 20 C.F.R. § 10.607(b) (1999).

⁹ See *Nelson T. Thompson*, 43 ECAB 919 (1992).

¹⁰ See *Dean D. Beets*, 43 ECAB 1153 (1992).

¹¹ See *Leona N. Travis*, 43 ECAB 227 (1991).

¹² See *Jesus D. Sanchez*, 41 ECAB 964 (1990).

¹³ See *Leona N. Travis*, *supra* note 11.

¹⁴ *Thankamma Mathews*, 44 ECAB 765, 770 (1993).

Moreover, appellant's representative did not argue that the prior determination was in error, but merely that the evidence the Office relied upon was no longer valid. While appellant's financial circumstances may have changed since 1994, this fact alone does not demonstrate that the Office's prior determination was clearly erroneous. As appellant failed to present clear evidence of error, the Office properly declined to reopen her case for merit review under section 8128(a) of the Act.¹⁵

The July 26, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.¹⁶

Dated, Washington, DC
July 23, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁵ As appellant's representative correctly noted in her brief on appeal, the Office's procedure manual provides that "[o]ccasionally a debtor may ask that the debt be forgiven on the grounds of financial hardship." Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.0300.15(c) (September 1994). In response to such a request, the Office "may then suspend collection action because of financial hardship but reserve the right to resume collection action in the event of future claims or a change in the debtor's circumstances." *Id.* The Office noted in its July 26, 2001 decision that it had begun making deductions for the overpayments, and as a result, the outstanding balance had been reduced to \$7,616.57. The Office further advised that "since [appellant's] compensation benefits [had] been terminated [by decision dated July 17, 2001], the senior examiner responsible for collecting the overpayment [would] have to determine the best way to pursue collection efforts." Additionally, the Office stated that the examiner responsible for the debt collection efforts would "be advised of the change in [appellant's] financial circumstances."

¹⁶ As previously noted, the record also includes a July 17, 2001 decision terminating appellant's wage-loss compensation and medical benefits. Appellant filed the instant appeal on August 20, 2001, and therefore, the Office's July 17, 2001 decision falls with the Board's jurisdiction. However, the Board will not exercise jurisdiction over the Office's July 17, 2001 decision. Neither appellant nor her representative has specifically requested that the Board review the July 17, 2001 decision. Moreover, prior to filing the instant appeal, appellant filed a timely request for an oral hearing regarding the Office's July 17, 2001 decision.