

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REBECCA CANDELARIO and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Hayward, CA

*Docket No. 02-24; Submitted on the Record;
Issued June 6, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

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 decision before the Board on this appeal is the Office's August 2, 2001 decision denying appellant's request for reconsideration. Since more than one year has elapsed between the last merit decision of record, dated May 18, 2000, and the filing of appellant's appeal on September 20, 2001, the Board lacks jurisdiction to review the merits of appellant's claim.¹

The last merit decision of record is the Board's May 18, 2000 decision affirming the Office's previous decisions denying appellant's claim for an emotional condition. Appellant requested reconsideration by letter dated July 16, 2001. The Office issued the August 2, 2001 decision denying appellant's request for reconsideration as untimely.

The Board finds that the Office properly denied appellant's request for reconsideration as untimely filed and lacking clear evidence of error.

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 compensation.⁴ The Office, through regulations, has imposed limitations on the exercise of its discretionary authority. One such limitation is that the Office will not review a decision denying

¹ 20 C.F.R. § 501.3(d)(2).

² 5 U.S.C. § 8128(a).

³ *Thankamma Mathews*, 44 ECAB 765, 768 (1993).

⁴ *Id.*

or terminating a benefit unless the application for review is filed within one year of the date of that decision.⁵ 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).⁶

Appellant requested reconsideration on July 16, 2001. Since appellant filed her reconsideration request more than one year from the Board's May 18, 2000 merit decision, the Board finds that the Office properly determined that said request was untimely.

In those cases where a request for reconsideration is not timely filed, the Board has held, however, 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.⁷ 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.⁸

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.⁹ The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error.¹⁰ Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.¹¹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹² 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.¹³

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.¹⁴ The Board makes an independent determination of whether a claimant has submitted clear evidence

⁵ *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

⁶ *Supra* note 3.

⁷ *Supra* note 5.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (May 1991).

⁹ *Dean D. Beets*, 43 ECAB 1153 (1992).

¹⁰ *Leona N. Travis*, 43 ECAB 227 (1991).

¹¹ *Jesus D. Sanchez*, 41 ECAB 964, 966 (1990).

¹² *Supra* note 10.

¹³ *Nelson T. Thompson*, 43 ECAB 919 (1992).

¹⁴ *Leon D. Faidley, Jr.*, 41 ECAB 104, 114 (1989).

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.¹⁵

The letter submitted by appellant does not establish clear evidence of error as it does not raise a substantial question as to the correctness of the most recent merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim. The Board notes that the underlying issue in the case is whether appellant sustained an emotional condition in the performance of duty. The Office found that appellant did not establish any compensable factors of employment. Appellant did not submit any evidence in support of her request for reconsideration to establish her emotional condition claim.

Appellant argued in her letter that the denial of her claim was "incorrect" and cited several alleged incidents which she believed attributed to her emotional condition. The Board addressed these allegations in the May 18, 2000 decision and found that appellant had not established any compensable factors of employment. Appellant's disagreement with the prior decisions does not constitute clear evidence of error that would require the Office to reopen her claim for consideration of the merits.

As appellant has failed to establish clear evidence of error on the part of the Office, the Office properly denied appellant's request for reconsideration.

The August 2, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 6, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁵ *Gregory Griffin, supra* note 5.