

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ABE E. SCOTT and DEPARTMENT OF THE NAVY,  
LONG BEACH NAVAL SHIPYARD, Long Beach, CA

*Docket No. 01-605; Submitted on the Record;  
Issued March 8, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's June 8 and July 19, 2000 requests for reconsideration on the grounds that they were untimely and failed to demonstrate clear evidence of error on the part of the Office in its most recent merit decision.

In the prior appeal of this case,<sup>1</sup> the Board noted that on April 8, 1994 the Office denied appellant's claim for compensation on the grounds that the evidence of record established that he did not sustain an emotional condition that was causally related to factors of his federal employment. In a decision dated May 1, 1995, the Office last reviewed the merits of appellant's claim and denied modification of its prior decision. Appellant requested reconsideration. On June 4, 1996 the Office denied a merit review of his claim. Appellant again requested reconsideration. On May 5, 1998 the Office again denied a merit review of his claim, finding that his request for reconsideration was untimely and failed to show clear evidence of error. The Board affirmed the Office's May 5, 1998 decision. Citing a provision of the Office's procedure manual that was directly on point,<sup>2</sup> the Board explained that the medical report appellant submitted to support his untimely request would have, at best, created an unresolved conflict in medical opinion and therefore would not have clearly shown that the Office made an error in denying his claim.

On June 8, 2000 appellant again requested reconsideration. He asked the Office to advise his physician what medical evidence was required. Appellant described what he called discrepancies and untruths and insisted that he was telling the truth about the fact of his case. He attached a June 1, 2000 statement entitled "[t]he [t]ruth," wherein he contended that people had

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<sup>1</sup> Docket No. 98-1880 (issued January 21, 2000).

<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (April 1991).

lied, insinuated that the Office was approving claims based on race and stated that his credibility was sabotaged and his life destroyed.<sup>3</sup>

In a decision dated July 27, 2000, the Office denied a merit review of appellant's claim, finding that he had failed to show an error of fact or law and failed to provide a medical report demonstrating clear evidence of error.

On July 19, 2000 appellant requested reconsideration and submitted the report of a psychological evaluation performed on June 16, 2000. The report, from Dr. Roger S. Pagel, a licensed clinical psychologist, related appellant's background, behavioral observations and test results. Dr. Pagel reported his principal diagnoses as major depression, severe, recurrent and panic attacks without agoraphobia. He noted appellant's vocational interests and reported that appellant appeared ready for low-stress vocational training and employment.

In a decision dated October 4, 2000, the Office denied appellant request on the grounds that it was untimely and failed to present clear evidence of error in the Office May 1, 1995 decision.

The Board finds that the Office properly denied appellant's June 8 and July 19, 2000 requests for reconsideration.

As the Board explained in the prior appeal, 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."<sup>4</sup>

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 provides that an application for reconsideration must be sent within one year of the date of the Office 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.<sup>5</sup>

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<sup>3</sup> The Office also received copies of letters from appellant to the President of the United States and to his United States Senator asking for their help to straighten out a problem he was having with "a very unjust decision" from the Office.

<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.607.

The most recent decision on the merits of appellant's claim is the Office's May 1, 1995 decision denying appellant's claim for compensation. The record shows that the Office denied appellant's claim because the weight of the medical opinion evidence, represented by the opinion of the Office referral physician, established that appellant's paranoid schizophrenia was a result of a genetic predisposition and early environmental factors and not of the compensable factors of his federal employment or other external factors in adulthood. The Office further denied appellant's claim because he had submitted insufficient medical opinion that his psychiatric condition was causally related to the compensable factors of his federal employment.

The Office denied appellant's claim for failing to establish the critical element of causal relationship, which is a medical issue.<sup>6</sup>

In a statement of review rights attached to the Office's last merit decision on May 1, 1995, the Office notified appellant that any request for reconsideration must be filed within one year of the date of that decision. Appellant's June 8 and July 19, 2000 requests for reconsideration are therefore untimely. To obtain a review of the merits of his claim, appellant's June 8 or July 19, 2000 request for reconsideration must establish, on its face, that the Office's May 1, 1995 decision was erroneous.

To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by the Office.<sup>7</sup> The evidence must be positive, precise and explicit and must manifest on its face that the Office committed an error.<sup>8</sup> Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.<sup>9</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the

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<sup>6</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>7</sup> *See Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>8</sup> *See Leona N. Travis*, 43 ECAB 227 (1991).

<sup>9</sup> *See Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>10</sup> *See Leona N. Travis*, *supra* note 8.

<sup>11</sup> *Nelson T. Thompson*, 43 ECAB 919 (1992).

<sup>12</sup> *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

part of the Office such that the Office abused its discretion in denying a merit review in the face of such evidence.<sup>13</sup>

Appellant's June 8 and July 19, 2000 requests for reconsideration do not establish that the Office's May 1, 1995 decision was clearly erroneous. Appellant's narrative assertions of discrepancies and untruths, of lies, racism and sabotage, do not alter the weight of the medical opinion evidence upon which the Office denied his claim. As noted earlier, causal relationship is a medical issue and the Office found that the weight of the medical opinion evidence established that appellant's paranoid schizophrenia was not causally related to the compensable factors of his federal employment.

In his July 19, 2000 request, appellant did submit additional medical evidence, but the psychological evaluation performed on June 16, 2000 offered no opinion on whether appellant's diagnosed condition was causally related to the compensable factors of appellant's federal employment. For this reason, the psychological evaluation has little bearing on the Office's May 1, 1995 decision as it does not demonstrate that the Office's decision was erroneous. As the Board explained in its prior decision, "clear evidence of error" is intended to represent a difficult standard. The claimant must present evidence that on its face shows that the Office made an error, such as a mathematical miscalculation in a schedule award for permanent impairment. Evidence such as a detailed, well-rationalized medical report which, if submitted prior to the Office's denial, would have created a conflict in medical opinion requiring further development, is not clear evidence of error and would not require a review of the merits of the claim. The evidence from the clinical psychologist fails to establish clear evidence of error.

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<sup>13</sup> *Gregory Griffin*, 41 ECAB 458, 466 (1990).

The October 4 and July 27, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
March 8, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member