

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA S. MILLS and U.S. POSTAL SERVICE,
POST OFFICE, Roseville, MI

*Docket No. 02-1381; Submitted on the Record;
Issued October 21, 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 request for reconsideration as untimely filed and lacking clear evidence of error.

By decision dated November 16, 2000, the hearing representative affirmed the denial of appellant's claim.

On September 29, 1999 appellant, then a 35-year-old transitional letter carrier, filed an occupational disease claim (Form CA-2) alleging that her anxiety/stress was causally related to her route changes, working over 40 hours per week and harassment by her supervisor. By decision dated March 20, 2000, the Office denied the claim, finding that appellant had not established a causal relationship between her anxiety/stress condition and accepted compensable work factors including route changes and working over 40 hours per week. In a decision dated November 16, 2000, an Office hearing representative affirmed the prior decision.

On April 9, 2002 the Office denied reconsideration on the grounds that appellant's request was untimely filed and failed to establish clear evidence of error.

On March 20, 2002 appellant requested reconsideration and submitted a January 21, 2001 report from Dr. Eric Alsterberg, a licensed psychologist.

In his January 21, 2001 report, Dr. Alsterberg noted that he had been treating appellant since June 5, 2000. He noted that initially appellant "presented with considerable anxiety and stress, which appeared to be mostly work related." He concluded that her anxiety issues had resolved, but that she continued therapy for other reasons.

The Board finds that the Office properly denied appellant's request for reconsideration on the grounds that the request was untimely and failed to show clear evidence of error.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed her appeal with the Board on April 31, 2002, the only decision properly before the Board is the Office's April 9, 2002 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's November 16 or March 20, 2000 merit decisions denying her claim for an employment-related emotional condition.²

Section 8128 of the Federal Employees' Compensation Act³ does not entitle a claimant to a review of an Office decision as a matter of right.⁴ This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.⁵

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a). As one such limitation, the Office will not review a decision denying or terminating compensation benefits unless the application for review is filed within one year of the date of that decision.⁶ 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).⁷

The Board has held, however, that a claimant has a right under 5 U.S.C. § 8128(a) to secure a review of an Office decision upon presentation of new evidence that the decision was erroneous.⁸ In accordance with this holding, 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.⁹

Since more than one year elapsed from the November 16, 2000 decision denying appellant's claim that she sustained a work-related emotional condition in the performance of duty to appellant's March 20, 2002 application for review, the request for reconsideration is

¹ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

² *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³ 5 U.S.C. § 8128(a).

⁴ *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990); *Leon D. Faidley, Jr.*, *supra* note 2.

⁵ *Leon D. Faidley, Jr.*, *supra* note 2. Compare 5 U.S.C. § 8124(b) which entitles a claimant to a hearing before an Office hearing representative as a matter of right provided that the request for a hearing is made within 30 days of a final Office decision and provided that the request is made prior to a request for reconsideration.

⁶ 20 C.F.R. § 10.607.

⁷ See *Gregory Griffin*, *supra* note 4.

⁸ See *Leonard E. Redway*, 28 ECAB 242, 246 (1977).

⁹ 20 C.F.R. § 10.607(b).

untimely. Therefore, appellant must submit clear evidence of error in the Office's last merit decision dated November 16, 2000.

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 must be manifested on its face that the Office committed an error.¹¹ Evidence which 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 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 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

With her reconsideration request appellant submitted a new report from Dr. Alsterberg, an attending licensed psychologist. In his January 21, 2001 report, Dr. Alsterberg stated initially that appellant "presented with considerable anxiety and stress, which appeared to be mostly work related." He concluded her anxiety issues had resolved and that her current therapy was for other reasons. The Board finds that this report fails to establish clear evidence of error by the Office.

The critical issue in the case at the time the Office issued its March 20, 2002 decision was whether appellant had established that her psychiatric or medical condition was related to work factors. As Dr. Alsterberg's reports do not contain medical rationale addressing causal relationship, they are of little relevance to appellant's claim and are entirely insufficient to establish clear evidence of error. Furthermore, he opined that appellant's anxiety condition had resolved and her current therapy was unrelated to her employment.

Appellant has not submitted evidence establishing clear evidence of error in the denial of her claim. Accordingly, the Office properly denied the March 20, 2002 reconsideration request.

¹⁰ See *Dean D. Beets*, 43 ECAB 1153, 1158 (1992).

¹¹ 20 C.F.R. § 10.607(b); *Fidel E. Perez*, 48 ECAB 663, 664-65 (1997); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

¹² See *Jimmy L. Day*, 48 ECAB 654, 656 (1997); *Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

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

¹⁴ *Leon D. Faidley, Jr.*, *supra* note 2.

¹⁵ See *Thankamma Mathews*, 44 ECAB 765, 770 (1993); *Gregory Griffin*, *supra* note 4.

The decision of the Office of Workers' Compensation Programs dated April 9, 2002 is affirmed.

Dated, Washington, DC
October 21, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member