

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT E. ADAMS and U.S. POSTAL SERVICE,
POST OFFICE, Duluth, GA

*Docket No. 03-531; Submitted on the Record;
Issued April 21, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration, received by the Office on June 18, 2002 was untimely filed and did not present clear evidence of error.

Section 8128(a) of the Federal Employees' Compensation Act¹ does not entitle a claimant to a review of an Office decision as a matter of right.² The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a).³ As one such limitation, the Office has stated that it will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.⁴ 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).⁵

The Board finds that appellant's request for reconsideration, received by the Office on June 18, 2002, was untimely filed and did not present clear evidence of error.

¹ 5 U.S.C. § 8128(a).

² *Veletta C. Coleman*, 48 ECAB 367 (1997).

³ Thus, although it is a matter of discretion on the part of the Office whether to review an award for or against payment of compensation, the Office has stated that a claimant may obtain review of the merits of a claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office. 20 C.F.R. § 10.606(b).

⁴ 20 C.F.R. § 10.607(a). The Board has concurred in the Office's limitation of its discretionary authority; *see Gregory Griffin*, 41 ECAB 186 (1989); *petition for recon. denied*, 41 ECAB 458 (1990).

⁵ *See Veletta C. Coleman*, *supra* note 2.

The Office properly determined in this case that appellant failed to file a timely application for review. In implementing the one-year time limitation, the Office's procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues.⁶ The Office issued its last merit decision in this case on March 26, 2001. In that decision, the Office found the evidence submitted with appellant's request for reconsideration to be insufficient to warrant modification of its prior determination that appellant failed to establish that he developed an emotional condition causally related to factors of his federal employment.

In a letter dated May 30, 2002, appellant submitted a copy of a March 23, 2001 Office of Personnel Management (OPM) decision, approving his application for disability retirement. Appellant asked that this evidence be added to his file. By letter dated June 14, 2002, appellant requested reconsideration of the Office's prior decision and submitted another copy of the OPM decision in support of his request. As appellant's June 14, 2002 request for reconsideration was made outside the one-year time limitation, which began the day after March 26, 2001, appellant's request for reconsideration was untimely.⁷

In those cases where a request for reconsideration is not timely filed, the Board has held 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.⁸ 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. § 10.606(a), if the claimant's application for review shows "clear evidence of error" on the part of the Office.⁹

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

⁶ *Veletta C. Coleman, supra note 2; Larry L. Lilton, 44 ECAB 243 (1992).*

⁷ The Board notes that even if the Office had considered appellant's earlier May 30, 2002 letter to be a valid request for reconsideration, this too would have been an untimely request.

⁸ *Veletta C. Coleman, supra note 2; Gregory Griffin, supra note 4.*

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(d) (May 1996).

part of the Office such that the Office abused its discretion in denying merit review in the face of such evidence.¹⁰

In the present case, in support of his request for reconsideration, appellant submitted a copy of a March 23, 2001 OPM decision, approving his claim for disability retirement. However, the Board has held that decisions of other administrative agencies with respect to whether or not an individual is disabled are not binding with respect to whether that individual is disabled under the Act.¹¹ Moreover, the OPM decision does not set forth the facts surrounding appellant's application for benefits or state upon what grounds his application was approved. Therefore, OPM's finding that appellant is eligible for disability retirement benefits does not constitute a binding disposition of the issue of whether appellant is disabled under the Act and is also not sufficient to raise a substantial question as to the correctness of the Office's March 26, 2001 decision.¹²

The Office's August 19, 2002 decision properly determined that appellant had not presented clear evidence of error, as he did not submit any medical or factual evidence sufficient to show that the Office erred in its prior decision.

The decision of the Office of Workers' Compensation Programs dated August 19, 2002 is hereby affirmed.

Dated, Washington, DC
April 21, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹⁰ *Veletta C. Coleman*, *supra* note 2.

¹¹ *Shelby J. Rycroft*, 44 ECAB 795 (1993); *Constance G. Mills*, 40 ECAB 317 (1988).

¹² *Mamie L. Morgan*, 47 ECAB 281 (1996); *Jeanette Butler*, 47 ECAB 128 (1995).