

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHELIA C. STEWART and U.S. POSTAL SERVICE, POST OFFICE,
New Orleans, LA

*Docket No. 03-577; Submitted on the Record;
Issued July 24, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's June 7, 2001 request for an oral hearing pursuant to 5 U.S.C. § 8124(b) on the grounds that it did not have the jurisdiction to review a final decision of the Employee's Compensation Appeals Board; (2) whether the Office properly denied appellant's March 11, 2002 request for reconsideration on the grounds that it was not timely filed and did not present clear evidence of error; and (3) whether the Office properly denied appellant's July 26, 2002 request for reconsideration.

This is the second appeal before the Board in this case. By decision and order issued July 2, 1998,¹ the Board affirmed a March 26, 1996 decision of the Office denying appellant's September 4, 1995 claim for schizophrenia on the grounds that it was not timely filed. The Board further found that appellant did not submit sufficient evidence to demonstrate either mental incompetence or exceptional circumstances that would toll the three-year time limitation. The law and facts of the decision and order are hereby incorporated by reference.²

On December 4, 1999 appellant filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that on January 1, 1981, she sustained schizophrenia and a

¹ Docket No. 96-2120.

² On October 9, 1998 appellant filed a claim in the United States District Court for the Eastern District of Louisiana, alleging that the Board's July 2, 1998 decision and order violated her due process rights under the Constitution of the United States. By order dated October 13, 1999, the Court dismissed appellant's case with prejudice on the grounds that it did not have jurisdiction as the Board's decision and order was not reviewable by the Court. The Court found that appellant had not presented a valid Constitutional claim. Appellant's application for disability retirement benefits through the Office of Personnel Management (OPM) was approved on November 22, 1999. The Board notes that the findings of other government agencies are not dispositive with regard to questions arising under the Federal Employees' Compensation Act, as other agencies rely on criteria for compensability other than a causal relationship to factors of federal employment. *Shelby J. Rycroft*, 44 ECAB 795 (1993).

nervous breakdown due to being fired from the employing establishment. The Office treated and developed this claim as a duplicate of appellant's September 4, 1995 claim.³

In a January 29, 2000 letter, appellant "request[ed] an oral hearing" before a representative of the Office's Branch of Hearings and Review. By decision dated March 14, 2000, the Office's Branch of Hearings and Review denied appellant's request for an oral hearing, on the grounds that a "final decision ha[d] not been made on the issue upon which an appeal had been requested. Therefore, the case is not in posture for an oral hearing at this time." The Office's Branch of Hearings and Review returned the case file to the Office's district office for any necessary further development and "issuance of a final decision."

In a September 8, 2000 letter, appellant again requested a "hearing." She asserted that the Office should not have administratively closed her case and requested that it be reopened. The Office treated her letter as a request for an oral hearing before a representative of the Office's Branch of Hearings and Review.

By decision dated October 25, 2000, the Office's Branch of Hearings and Review denied appellant's September 8, 2000 request for an oral hearing, finding that it did not have jurisdiction to review the Board's July 2, 1998 decision in the absence of a further final decision of the Office. The Office further denied it on the grounds that the issue involved could be addressed equally well by "requesting reconsideration from the district office and submitting evidence not previously considered which establishe[d] [appellant's] claim [was] timely filed."

In a November 6, 2000 letter addressed to the Office, appellant "request[ed] a hearing to Employee Compensation Appeals Board and everything that [is] d[ue] [to] [her]." She asked that she not be told to "make another request," as she was "requesting everything." The Office treated appellant's letter as a request for an oral hearing before a representative of the Office's Branch of Hearings and Review.

By decision dated February 13, 2001, the Office's Branch of Hearings and Review denied appellant's November 6, 2000 request for a hearing on the grounds that it did not have jurisdiction to review the final decision of the Board in the absence of a further final decision of the Office. The Office then reviewed appellant's request for a hearing and further denied it on the grounds that the issue involved could be addressed equally well by "requesting reconsideration from the district office and submitting evidence not previously considered which establishe[d] [appellant's] claim [was] timely filed."

Appellant again requested a hearing in letters dated June 17, August 27, September 19 and December 6, 2001. She asserted that she had "new evidence" in her case, as she had recently recalled that in 1982, she informed her supervisor, Al Parker, that she sustained a "nervous breakdown," that Mr. Parker then informed his superior, Elridge Monnett and that

³ Appellant originally filed an occupational disease claim on September 4, 1995, assigned claim No. 16-0269490. Her December 4, 1999 claim was assigned claim No. 16-0346650. The Office characterized the December 4, 1999 claim as a duplicate claim and doubled it with claim No. 16-0269490 on October 23, 2001. The Office noted that case number 16-0346650 was "being closed administratively as it [was] a duplicate of the already adjudicated case 160269490." In an April 20, 2000 letter, the Office advised appellant to use claim No. 16-0269490 if she wished to pursue her claim.

Mr. Parker and Mr. Monnett then sent appellant to a psychiatrist at Charity Hospital, stating that appellant would lose her job if she did not attend the appointment. Appellant asserted that records from Charity Hospital would prove the employing establishment's knowledge of her psychiatric condition prior to her termination, thus rendering her claim timely.

On December 20, 2001 the Office requested that the employing establishment respond to appellant's "application for reconsideration under 5 U.S.C. § 8128 which warrants a merit review by this Office." The Office enclosed copies of appellant's letters.

By decision dated February 20, 2002, the Office's Branch of Hearings and Review denied appellant's June 17, 2001 request for a hearing on the grounds that it did not have jurisdiction to review the Board's decision in the absence of a final decision from the Office. The Office then reviewed appellant's request for a hearing and further denied it on the grounds that the issue involved could be addressed equally well by "requesting reconsideration from the district office and submitting evidence not previously considered which establishe[d] [appellant's] claim [was] timely filed."

Appellant disagreed with this decision and, in a March 11, 2002 letter, requested "a review of [her] case." She reiterated that her recollection of informing Mr. Parker in 1982 of her nervous breakdown constituted new evidence. The Office treated appellant's letter as a request for reconsideration.

By decision dated May 10, 2002, the Office denied appellant's March 11, 2002 request for reconsideration on the grounds that it was not timely filed within one year of the Office's March 26, 1996 decision, the final merit decision in the case. The Office conducted a limited review of the case and noted that, although appellant stated that she informed Mr. Parker of her psychiatric condition, her February 6, 1996 statement to the Office indicated that her supervisor Janetta Elow did not know of the relationship of appellant's illness to her work duties. The Office found that the evidence appellant submitted was insufficient to establish clear evidence of error in its prior decision.

Appellant disagreed with this decision and in a May 9, 2002 letter again requested a review of her case to consider her recollections as new evidence. Accompanying a July 26, 2002 letter, appellant submitted an April 13, 1981 x-ray report diagnosing a possible slight avulsion fracture of the left small toe and an August 18, 1982 psychiatric treatment plan from Charity Hospital, showing an admission diagnosis of acute psychosis.⁴

By decision dated September 5, 2002, the Office denied appellant's request for reconsideration of the May 10, 2002 decision on the grounds that it did not raise substantive legal questions or include new and relevant evidence.

Appellant filed her appeal with the Board on December 30, 2002 through her elected representative. 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

⁴ Appellant also submitted a psychiatric discharge report concerning her hospitalization from August 19 to 23, 1982. This report was previously of record as of November 1, 1995.

appeal.⁵ As appellant filed her appeal with the Board on December 30, 2002, the only decisions properly before the Board are the September 5, May 10 and February 20, 2002 decisions. The Board does not have jurisdiction over the March 14 and October 25, 2000 and February 13, 2001 decisions as they were issued more than one year prior to her application for review.

The Board finds that the Office properly denied appellant's request for a hearing pursuant to 5 U.S.C. § 8124(b).

The statutory right to a hearing under section 8124(b)(1)⁶ follows an initial final decision of the Office.⁷ Section 8124 of the Act sets forth the appellate jurisdiction of the Office's Branch of Hearings and Review in holding hearings under the Act in relevant part as follows:

“(a) The Secretary of Labor shall determine and make a finding of facts and make an award for or against the payment of compensation under this subchapter....

“(b)(1) Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary....”

The Act provides the Office with original jurisdiction in the processing of compensation claims and section 8124(a) specifically provides the Office with the duty and authority to issue an initial decision on an employee's claim for compensation. Once an initial decision is made in a compensation case, appellate rights arise by which the employee may seek further review of his claim: the right to a hearing before the Office (section 8124(b)(1)); the right to reconsideration before the Office (section 8128(a)); or, an appeal to the Board (section 8149).

The Office issued a March 26, 1996 decision denying appellant's September 4, 1995 emotional condition claim. She exercised her appellate rights by appealing to the Board. After the Board issued its decision on July 2, 1998, appellant requested a hearing before the Office's Branch of Hearings and Review on January 29, September 8 and November 6, 2000. The Office's Branch of Hearings and Review denied these requests by decisions dated March 14 and October 25, 2000 and February 13, 2001 respectively, on the grounds that it did not have the jurisdiction to grant a request for a hearing following a Board decision.

In a June 17, 2001 letter, appellant again requested an oral hearing before a representative of the Office's Branch of Hearings and Review. The Office's Branch of Hearings and Review denied this request by its February 20, 2002 decision on the grounds that it did not have the jurisdiction to review a final decision of the Board immediately following its issuance. The Board has held that claimants do not have the right under section 8124(b)(1) to request hearings

⁵ 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

⁶ 5 U.S.C. § 8124(b)(1).

⁷ 5 U.S.C. § 8124(a)(1).

in the absence of a final Office decision and has further held that the Office does not have the discretionary authority to grant a request for a hearing immediately following a Board decision.⁸

The Board explained in *Eileen A. Nelson*,⁹ that the Branch may not assume jurisdiction in the claims process absent a final adverse decision by the Director. Following the Board's July 2, 1998 decision there remained no final decision of the Office left unreviewed over which the Office's Branch of Hearings and Review could assume jurisdiction to exercise its discretionary appellate authority.¹⁰ The Office, therefore, properly denied appellant's June 17, 2001 request for an oral hearing.

The Board finds that the Office properly denied appellant's March 11, 2002 request for reconsideration on the grounds that it was untimely filed and did not present clear evidence of error.

The Office, through its implementing regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). The Office 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.¹¹ When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence of error that the Office's final merit decision was in error.¹²

In this case, the Office denied appellant's September 4, 1995 emotional condition claim by a March 26, 1996 decision on the grounds that it was untimely filed. Following the Board's July 2, 1998 decision, appellant filed four requests for an oral hearing with the Office's Branch of Hearings and Review. Thereafter, she requested reconsideration in a March 11, 2002 letter, contending that she recently recalled informing her supervisor, Mr. Parker, about her psychiatric condition before she stopped work. By decision dated May 10, 2002, the Office denied appellant's reconsideration request on the grounds that it was untimely filed and did not show clear evidence of error.

As more than one year elapsed from the March 26, 1996 merit decision of the Office to appellant's March 11, 2002 reconsideration request, her request for reconsideration is untimely. Further, the evidence submitted by appellant in support of her reconsideration request does not raise a substantial question as to the correctness of the Office's March 26, 1996 merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim.

⁸ *Robert N. Thomas*, 51 ECAB 180 (1999).

⁹ 46 ECAB 377 (1994).

¹⁰ *Id.*

¹¹ 20 C.F.R. § 10.607(a) (1999).

¹² 20 C.F.R. § 10.607(b) (1999).

Appellant asserted that she recently recalled having informed her supervisor, Mr. Parker, of her psychiatric condition prior to stopping work in 1986, thus rendering her claim timely. However, the Board finds that the contention raised by appellant does not establish clear evidence of error.

The issue, at the time of the Office's March 6, 1996 decision, was the timeliness of her emotional condition claim. In her March 11, 2002 request for reconsideration, appellant argues that by having informed a supervisor of the presence of her psychiatric condition prior to her stopping work, her claim was timely. However, appellant submitted no corroborating evidence establishing that she notified Mr. Parker as alleged. Further, appellant's supervisor's awareness of the existence of a claimed condition is insufficient, in and of itself, to establish notice to the employing establishment. Appellant must also establish that the employing establishment was on actual notice that she believed her psychiatric condition was work related.¹³

The Board notes that appellant did not assert that she informed Mr. Parker that she believed her psychiatric condition was work related, only that she told him about a "nervous breakdown." Appellant has not asserted that at the time she allegedly informed Mr. Parker of her psychiatric condition, that she believed there to be a causal relationship between work factors and her claimed psychiatric condition. Also, as the Office found in its May 10, 2002 decision, appellant's prior statements indicate that her immediate supervisor did not know of appellant's belief that her schizophrenia and "nervous breakdowns" were caused by work factors.

Therefore, appellant's arguments do not establish clear evidence of error. She has not shown by the evidence and arguments submitted in support of her request for reconsideration that the Office clearly erred when it found that her September 4, 1995 emotional condition claim was untimely filed. For these reasons, the Office acted within its discretion in refusing to reopen appellant's case for further review under 5 U.S.C. § 8128(a).

The Board also, finds that the Office properly denied appellant's July 26, 2002 request for reconsideration under section 8128(a) of the Act.

Under 20 C.F.R. § 10.607, a claimant may obtain a review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent evidence not previously considered by the Office.¹⁴

Appellant requested reconsideration by July 26, 2002 letter and submitted a 1981 foot x-ray and an August 18, 1982 psychiatric treatment plan not previously of record. The 1981 foot x-ray, although new evidence, is irrelevant to appellant's emotional condition claim and does not indicate any error by the Office in adjudicating appellant's emotional condition claim. The August 18, 1982 psychiatric treatment plan is duplicative of other reports from her

¹³ *Delmont L. Thompson*, 51 ECAB 155 (1999) (A claim may be regarded as timely if an immediate superior had actual knowledge of the injury within 30 days such that the immediate supervisor was put reasonably on notice of an on-the-job injury or death.)

¹⁴ 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

hospitalization previously of record. Appellant also submitted a hospital discharge report regarding her psychiatric hospitalization from August 19 to 23, 1982, which was previously of record as of November 1, 1995 and considered by the Office and contains much of the information set forth in the August 18, 1982 treatment plan. Thus, the two August 1982 reports either duplicate or repeat evidence previously of record. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁵

The evidence submitted does not demonstrate that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office; or constitute relevant and pertinent evidence not previously considered by the Office. Therefore, the Office acted within its discretion in refusing to reopen appellant's claim for a review on the merits.

The decisions of the Office of Workers' Compensation Programs dated September 5, May 10 and February 20, 2002 are hereby affirmed.

Dated, Washington, DC
July 24, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁵ *Howard A. Williams*, 45 ECAB 853 (1994).