

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FERMIN F. RODRIGUEZ and U.S. POSTAL SERVICE,  
POST OFFICE, San Juan, PR

*Docket No. 02-1936; Submitted on the Record;  
Issued March 13, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly found that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

On February 18, 2000 appellant, then a 49-year-old letter carrier, filed an occupational claim alleging that he became aware that he sustained an emotional condition at work due to stress on March 23, 1998. Appellant stated that with a new administration, lots of changes occurred and the employees were humiliated. He alleged that on June 23 and June 24, 1997 he had to testify on behalf of his coworker, the shop steward and the judge who presided, Hon. Judge Joseph A. Hallock, issued a protective order on all witnesses in the case. Appellant said management applied pressure on him and other witnesses not to testify and, after he testified, management "rewarded" him and the other witnesses by "destroying us in all aspects of life." He submitted medical evidence, an excerpt of testimony from a hearing before the Merit Systems Protection Board (MSPB) on June 24, 1997 related to the case of his coworker, Ismael Rivera Silva, and an "[i]ntervention/[i]nquiry" report dated April 15, 1999 from Rafael Gomila addressing management's alleged harassment of the carrier, Mr. Rivera, for his union activities and of coworkers who supported him. Mr. Gomila stated that, after the June 23 and June 24, 1997 hearing, the administrative law judge issued a bench decision for the protection of all witnesses.

By letter dated June 6, 2000, the Office requested additional evidence from appellant, including factors both work related and nonwork related which contributed to his stress, the action management took toward him and other witnesses and the nature of his testimony on June 23 and June 24, 1997.

In an undated letter, appellant's application for disability retirement was approved.

By letter dated July 2, 2000, appellant explained that he had difficulty writing because he was suffering from major depression and could not concentrate. He stated that his testimony at

the MSPB hearing concerned management's abuse of Mr. Rivera and that Mr. Rivera won his case. Appellant stated that the reason for the delay in filing his claim was that he "lost the desire of everything" and did not know "where to go."

By decision dated December 18, 2000, the Office denied the claim, stating that appellant failed to establish that he sustained an injury on March 8, 1998, as alleged.

By letter dated December 29, 2001, appellant requested reconsideration of the Office's decision and submitted statements from his two sons, daughter-in-law, wife and Mr. Rivera, describing the deterioration of appellant's medical condition. Mr. Rivera stated that, when management learned of appellant's participation in the hearing in June 1997, it began "to intimidate and harass [appellant] in every way possible." He alleged that when letter carriers were present, he heard "Efrain Sanchez" say to appellant that he was lazy, too old for the job and he should quit and find another job. Mr. Rivera stated that management did not modify appellant's Route 24 when appellant "pointed out to different managers" that it was too long, that it required a territorial adjustment and there was no suitable place for lunch while en route. One of appellant's witnesses stated that, after appellant participated in the MSPB hearing, management "took reprisals like never before." Appellant's daughter-in-law stated that "the emotional humiliation" appellant received from his supervisors "marked him for life." Appellant's wife stated that when Mr. Rivera won his cases, "all hell broke loose" and despite the protection order, management persecuted the witnesses and "things got worst."

By letter dated November 9, 2001, witness Lora C. Renaldo alleged that, when management became aware that appellant was going to testify at the MSPB hearing, management began to humiliate and disgrace appellant and to permit other employees to humiliate appellant. Ms. Renaldo noted that she saw and heard "all the comments about his person" and Mr. Sanchez "took advantage of his position" to commit "all his abusive power toward him."

A letter dated March 7, 2002 from the employing establishment stated that appellant retired in 1998.

The record contains a notice of a change in appellant's address dated February 26, 2002, received by the Office by facsimile on March 13, 2002, stating that his new address was P.O. Box 151972, Tampa, FL 33684.

By letter dated April 3, 2002, the Office denied appellant's request for reconsideration, finding that the reconsideration request of December 29, 2001 was filed more than a year after the Office's December 18, 2000 decision and therefore untimely and that appellant did not establish clear evidence of error.

The Board's jurisdiction to consider and decide appeals from a final decision of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> As appellant filed the appeal with the Board on July 17, 2002, the only decision before the Board is the Office's April 3, 2002 decision, denying appellant's request for reconsideration.

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<sup>1</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>2</sup> The Office will not review a decision denying or terminating benefits unless the application for review is filed within one year of the date of that decision.<sup>3</sup> The Office will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error by the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.<sup>4</sup>

Appellant made his December 29, 2001 request for reconsideration more than one year after the Office's December 18, 2000 decision, the most recent decision on the merits of his claim. His request was, therefore, untimely. The question for determination is whether the reconsideration request shows clear evidence of error.

To show clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by the Office.<sup>5</sup> The evidence must be positive, precise and explicit and must be manifested on its fact that the Office committed an error.<sup>6</sup> Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.<sup>7</sup> It is not enough merely to show that the evidence could be construed to as to produce a contrary conclusion.<sup>8</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>9</sup>

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<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.607(a). *See also Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

<sup>4</sup> 20 C.F.R. § 10.607(b); *see Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>5</sup> *Willie J. Hamilton*, 52 ECAB \_\_\_\_ (Docket No. 00-1468, issued June 5, 2001); *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>6</sup> *Willie J. Hamilton*, *supra* note 5; *Leona N. Travis*, 43 ECAB 227 (1991).

<sup>7</sup> *See Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>8</sup> *Leona N. Travis*, *supra* note 6.

<sup>9</sup> *Willie J. Hamilton*, *supra* note 5.

The Office of Workers' Compensation Programs' April 3, 2002 decision is hereby affirmed.

Dated, Washington, DC  
March 13, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member