

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY R. HARRELSON and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, OH

*Docket No. 03-138; Submitted on the Record;
Issued March 10, 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 abused its discretion by refusing to reopen appellant's case for review of the merits pursuant to 5 U.S.C. § 8128(a) on the grounds that appellant's request for reconsideration was untimely filed and failed to present clear evidence of error.

This case has previously been on appeal before the Board. In its April 3, 2001 decision, the Board found that appellant established a compensable factor of employment with respect to his reaction to being told by his supervisor that his safety was threatened by a coworker. The Board, however, found the medical evidence of record insufficient to establish that appellant sustained an emotional condition due to the accepted employment factor. The facts and circumstances are set forth in the Board's April 3, 2001 decision, and are herein incorporated by reference.¹

By letter dated May 29, 2002, appellant, through his attorney, requested reconsideration. In an accompanying letter dated September 21, 1998, Dr. H. Owen Ward, a licensed clinical psychologist, advised the employing establishment that appellant was scheduled to return to work on September 22, 1998, but that he would not release appellant to return to work until it had taken measures to protect him from the coworker who had threatened him. Dr. Ward stated that appellant needed to continue to take his medication when he returned to work to avoid a relapse and that he would be susceptible to a relapse if he was not protected from harassment by the coworker in question or management.

By decision dated September 17, 2002, the Office denied appellant's request for reconsideration on the grounds that it was not timely filed within the one-year time limitation and failed to present clear evidence of error.

¹ Docket No. 00-1730 (issued April 3, 2001).

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for review of the merits pursuant to 5 U.S.C. § 8128(a) on the grounds that appellant's request for reconsideration was untimely filed and failed to present clear evidence of error.

Section 8128(a) of the Federal Employees' Compensation Act² does not entitle a claimant to a review of an Office decision as a matter of right.³ The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). 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

In denying appellant's May 29, 2002 request for reconsideration, the Office properly determined that appellant failed to file a timely application for review in its September 17, 2002 decision. 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 last merit decision in this case was issued by the Board on April 3, 2001 finding that appellant failed to establish an emotional condition caused by the compensable factor of employment, his reaction to being told that his life was threatened by a coworker. Appellant's May 29, 2002 request for reconsideration was made more than one year later. Thus, the Board finds that appellant's request for reconsideration was untimely filed.

In support of his request for reconsideration, appellant submitted the September 21, 1998 letter of Dr. Ward, a licensed clinical psychologist, advising the employing establishment about the conditions under which he would release appellant to return to work. The Board previously considered this evidence in its April 3, 2001 decision. Material that is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.⁷

Appellant has not submitted any evidence raising a substantial question as to the correctness of the Office's decision dated February 18, 1999 subsequently modified and affirmed by the Board's April 3, 2001 decision. The evidence submitted does not establish clear evidence of error such that the Office abused its discretion in denying further merit review of the claim.

² 5 U.S.C. § 8128(a).

³ *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁴ 20 C.F.R. § 10.607(a).

⁵ See cases cited *supra* note 3.

⁶ *Larry L. Lilton*, 44 ECAB 243 (1992).

⁷ See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

The September 17, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 10, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member