

**United States Department of Labor
Employees' Compensation Appeals Board**

MARGARET J. BOYD, Appellant)	
)	
and)	Docket No. 04-1127
)	Issued: August 11, 2004
U.S. POSTAL SERVICE, POST OFFICE,)	
Kansas City, MO, Employer)	
)	

Appearances:
Margaret J. Boyd, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 23, 2004 appellant filed an appeal of a February 26, 2004 Office of Workers' Compensation Programs' decision which denied her request for reconsideration on the grounds that it was untimely filed and failed to demonstrate clear evidence of error. Because more than one year has elapsed from the last merit decision dated January 28, 2003 to the filing of this appeal on March 23, 2004, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d).

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128 on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On December 2, 2002 appellant, then a 52-year-old mail processor clerk, filed an occupational disease claim alleging that she sustained job-related stress and depression.

Appellant stated that she was constantly watched by supervisors and that her character had been defamed. She did not stop work. In support of her claim, appellant submitted a treatment note in which a resident at the Kansas University Medical Center whose signature is illegible stated that appellant had a long history of bipolar mood disorder with episodes of exacerbation and long periods of remission. The physician noted a recent exacerbation which began in November and advised that she currently could not work.

By letter dated December 17, 2002, the Office advised appellant that the evidence submitted was insufficient to establish her claim and informed her that she should submit a statement regarding the specific employment conditions or incidents which she felt contributed to her condition as well as a comprehensive medical report showing a diagnosis resulting from her federal work activities, and a physician's opinion, with medical reasons for such opinion, as to how the work exposure contributed to the diagnosed condition. She was given approximately 30 days to respond. In a second letter dated that day, the Office requested that the employing establishment provide information regarding appellant's job duties and the allegations made in her claim.

In a decision dated January 28, 2003, the Office denied the claim on the grounds that fact of injury was not established. The Office noted that appellant did not respond to the December 17, 2002 letter.

On February 13, 2004 appellant requested reconsideration, stating that she was under medical treatment for stress for which she had to take off work. She did not submit any additional evidence.

By decision dated February 26, 2004, the Office denied appellant's request on the grounds that it had not been filed within one year of the January 28, 2003 merit decision and did not show clear evidence of error.

LEGAL PRECEDENT

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of the Federal Employees' Compensation Act.¹ 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.² When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.³

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 manifest on its face that the Office committed an error. Evidence which does not raise a

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.607(b); *see Gladys Mercado*, 52 ECAB 255 (2001).

³ *Cresenciano Martinez*, 51 ECAB 322 (2000).

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 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 part of the Office.⁴

ANALYSIS

The only decision before the Board is the February 28, 2004 decision in which the Office denied appellant's request for reconsideration on the grounds that the request was untimely filed and failed to demonstrate clear evidence of error. The Board finds that as more than one year had elapsed from the date of issuance of the January 28, 2003 merit decision and appellant's request for reconsideration dated February 13, 2004, her request for reconsideration was untimely. The Board further finds that appellant failed to establish clear evidence of error.

With her February 13, 2004 request for reconsideration, appellant submitted no additional evidence and merely stated that she was under medical care and could not work. In order to establish clear evidence of error, a claimant must submit evidence that is positive, precise and explicit and must 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.⁵

The Board finds that appellant's February 13, 2004 request for reconsideration failed to establish clear evidence of error. Appellant did not submit any medical opinion evidence with her request nor present any evidence of error in her request letter. Consequently, appellant has not met her burden to establish clear evidence of error on the part of the Office such that the Office erred in denying merit review.

The Board finds that the Office properly performed a limited review of appellant's argument to ascertain whether it demonstrated clear evidence of error. The Office properly denied appellant's untimely request for reconsideration.

CONCLUSION

The Board finds that appellant failed to establish clear evidence of error and the Office properly denied further review of her claim.

⁴ *Nancy Marcano*, 50 ECAB 110 (1998).

⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 26, 2004 be affirmed.

Issued: August 11, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member