



## **FACTUAL HISTORY**

On August 9, 2002 appellant, then a 44-year-old mail handler, filed a claim alleging that he sustained “mental stress and panic attacks” due to various incidents and conditions at work. He alleged that the employing establishment failed to pay him monies which were due to him on several occasions. Appellant claimed that in August 1996 the employing establishment stopped his income due to “false statements” and that after he returned to work in May 2002 he did not receive payment for a period that he used annual leave for vacation.<sup>2</sup> He asserted that on other occasions he was not paid for working on holidays and that he was not compensated for the fact that he could only work four hours per day during certain periods.<sup>3</sup> Appellant alleged that he asked higher-level officials in the employing establishment to address his concerns regarding these matters but that they were not responsive. He claimed that the employing establishment did not make adequate accommodations for his medical problems. Appellant stopped work on July 26, 2002.

Appellant submitted medical evidence in support of his claim, including several reports of Dr. Louis D. Zegarelli, an attending osteopath. The record also contains an undated statement in which Homer Thompson, a supervisor, indicated that appellant’s medical restrictions were respected when he returned to work in mid 2002.

By decision dated September 25, 2002, the Office denied appellant’s emotional condition claim on the grounds that he did not establish any compensable employment factors.

By letter dated January 22, 2004, appellant requested reconsideration of his claim. He submitted a July 26, 2002 report of Dr. Zegarelli which had previously been submitted as well as portions of other medical reports of attending physicians. Appellant also submitted various administrative documents, including lists of his salary rates for certain periods, a document containing guidelines for returning to work, a letter from his congressional representative and documents concerning the requirements of a job offer in 1996 and the unavailability of limited-duty work in 1997. In an undated letter and a letter dated February 26, 2004, appellant claimed that he did not receive certain income payments and was not adequately accommodated in an appropriate job.

By decision dated March 23, 2004, the Office denied appellant’s request for further review of the merits of his claim on the grounds that his request was untimely filed and failed to demonstrate clear evidence of error.

## **LEGAL PRECEDENT**

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must file his or her application for review within one year of the date of that decision.<sup>4</sup>

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<sup>2</sup> He also indicated that the employing establishment unfairly denied his requests for use of sick leave.

<sup>3</sup> For various periods, appellant worked in a limited-duty position for four hours per day.

<sup>4</sup> 20 C.F.R. § 10.607(a).

The Board has found that the imposition of the one-year limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a) of the Federal Employees' Compensation Act.<sup>5</sup>

The Office, however, may not deny an application for review solely on the grounds that the application was not timely filed. When an application for review is not timely filed, the Office must nevertheless undertake a limited review to determine whether the application establishes "clear evidence of error."<sup>6</sup> Office regulations and procedure provide 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. § 10.607(a), if the claimant's application for review shows "clear evidence of error" on the part of the Office.<sup>7</sup>

### ANALYSIS

By decision dated September 25, 2002, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors.<sup>8</sup> In its March 23, 2004 decision, the Office properly determined that appellant filed an untimely request for reconsideration of this decision. Appellant's reconsideration request was filed on January 22, 2004, more than one year after the Office's September 25, 2002 decision, and therefore he must demonstrate clear evidence of error on the part of the Office in issuing this decision.

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.<sup>9</sup> The evidence must be positive, precise and explicit and must manifest on its face that the Office committed an error.<sup>10</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>11</sup> It is not enough merely to show that the evidence could be construed

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<sup>5</sup> *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

<sup>6</sup> *See* 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

<sup>7</sup> 20 C.F.R. § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3d (January 2004). Office procedure further provides, "The term 'clear evidence of error' is intended to represent a difficult standard. The claimant must present evidence which on its face shows that the [Office] made an error (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error." *Id.* at Chapter 2.1602.3c.

<sup>8</sup> Where disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. *See Lillian Cutler*, 28 ECAB 125 (1976). Appellant has the burden to submit a detailed description of the employment factors or conditions which he believes caused or adversely affected the condition for which compensation is claimed and to submit rationalized medical evidence relating any accepted employment factors to the claimed condition. *See Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>9</sup> *See Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

<sup>10</sup> *See Leona N. Travis*, 43 ECAB 227, 240 (1991).

<sup>11</sup> *See Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

so as to produce a contrary conclusion.<sup>12</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>13</sup> 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.<sup>14</sup>

Appellant has not demonstrated clear evidence of error on the part of the Office in issuing its September 25, 2002 decision. Appellant submitted a July 26, 2002 report of Dr. Zegarelli, an attending osteopath, as well as portions of other medical reports of attending physicians. However, these reports are not relevant to appellant's claim as it was denied on the factual basis that he did not establish any compensable employment factors, not on any deficiency in the medical evidence.<sup>15</sup>

Appellant also submitted various administrative documents, including lists of his salary rates for certain periods, a document containing guidelines for returning to work, a letter from his congressional representative and documents concerning the requirements of a job offer in 1996 and the unavailability of limited-duty work in 1997. These documents are not relevant to the issue of the present case in that they do not lend any support to the establishment of any claimed employment factors. Appellant claimed that the employing establishment did not pay him all monies which were due, wrongly denied his leave on several occasions and did not make adequate accommodations for his medical problems. But none of these documents provide any indication that the employing establishment erred or engaged in wrongdoing with respect to any of these matters.<sup>16</sup> In his letters, appellant again claimed that he did not receive certain income payments and was not adequately accommodated in an appropriate job. However, these arguments are similar to those he presented in the original claim for compensation. None of this evidence is sufficient to establish error by the Office in the denial of his claim.

The Board finds that none of the evidence or argument submitted by appellant in support of his untimely reconsideration request would raise a substantial question concerning the correctness of the Office's September 25, 2002 decision or otherwise establish clear evidence of error.

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<sup>12</sup> See *Leona N. Travis*, *supra* note 10.

<sup>13</sup> See *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

<sup>14</sup> *Leon D. Faidley, Jr.*, *supra* note 5.

<sup>15</sup> When a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

<sup>16</sup> The Board has also found that an administrative or personnel matter -- such as handling leave requests, managing the payment of monies due, or assigning work duties in the present case -- would only be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. See generally *Richard J. Dube*, 42 ECAB 916 (1991).

**CONCLUSION**

The Board finds that the Office properly denied appellant's request for further review of the merits of his claim on the grounds that his request was untimely filed and failed to demonstrate clear evidence of error.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 23, 2004 is affirmed.

Issued: January 28, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member