

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

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**FELICIA F. LYNUM, Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Palo Alto, CA, Employer**

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**Docket No. 06-329  
Issued: April 12, 2006**

*Appearances:*  
*Felicia F. Lynum, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 22, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 27, 2005 nonmerit decision, denying her request for merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The last merit decision of record was the Office's October 29, 2002 decision, denying her emotional condition claim. Because more than one year has elapsed between the last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.<sup>1</sup>

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of her claim on the grounds that her request was untimely filed and failed to demonstrate clear evidence of error.

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<sup>1</sup> See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

## **FACTUAL HISTORY**

On August 9, 2001 appellant, then a 40-year-old vocational nurse filed an occupational disease claim alleging that she sustained depression, panic attacks and chest pains due to work-related stress. She stopped work on August 13, 2001.

In several statements, appellant alleged that she was harassed by Alice Naqvi, a supervisor, and her staff members, including Jim Beatty, Leigh Roche, Sandra Parks, Linda Thomas, Patrick O'Donnell, Sandra Green, Jennifer Foster, Karen Reilly and Margaret Jendeski. She claimed that Ms. Naqvi said that she did not care about appellant's concerns regarding work matters, failed to give her proper job descriptions and mishandled appellant's work assignments. Appellant contended that Ms. Naqvi wrongly stopped her pay for being absent without leave in 2001, refused to retrain her after she returned to work following her recovery from an injury and improperly changed appellant's job duties on several occasions. She claimed that several members of Ms. Naqvi's staff stood outside her office and yelled her name, unreasonably monitored her movements in the workplace, listened in on her telephone calls and failed to provide help or training regarding computer matters. Appellant alleged that Mr. Roche sexually harassed her and used profanity in her presence and claimed that Mr. Beatty "cursed" at her and often "burst" into her office without knocking. She asserted that Ms. Jendeski and two other employees called her a "monkey" and that her telephone was made to smell like "spoiled fish or urine." She alleged that in 1998 she was accused of stealing a hepatitis vaccination and was disciplined for not providing medical documentation for an absence. Appellant claimed that the employing establishment retaliated against her for filing complaints with the Equal Employment Opportunity (EEO) Commission and that she was forced to work beyond her medical restrictions.<sup>2</sup>

The record contains numerous documents relating to EEO complaints and grievances filed against the employing establishment, letters from employing establishment officials in response to appellant's claims and documents concerning an internal investigation of her activities in the workplace.

By decision dated February 28, 2002, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors.<sup>3</sup>

Appellant continued to submit statements detailing her claims regarding the actions of her supervisors. She also submitted additional medical evidence and documents concerning complaints and grievances she had filed.

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<sup>2</sup> Appellant submitted a medical report from September 2001 which described her emotional condition.

<sup>3</sup> The Office determined that appellant had not established the factual basis for most of her allegations. It found that there was a factual basis for some of the incidents described by appellant but that there was no evidence that the employing establishment acted improperly. She requested a hearing before an Office hearing representative regarding the February 28, 2002 decision. In a decision dated May 15, 2002, the Office denied the request as untimely.

By decision dated October 29, 2002, the Office affirmed its February 28, 2002 decision, finding that appellant had not established any compensable employment factors.<sup>4</sup>

By letter dated October 1, 2005 and received by the Office on October 20, 2005, appellant requested reconsideration of the Office's October 29, 2002 decision.<sup>5</sup>

In support of her request, appellant submitted a June 22, 2001 report in which Dr. Peter W. Yip, an attending Board-certified internist, evaluated her medical condition. She also submitted a medical report from a July 13, 2001 emergency room visit for chest pains and medical reports for psychiatric evaluations conducted between August 31, 2001 to December 24, 2003.

Appellant submitted letters to congressional representatives and Department of Labor officials dated April 30, July 20 and October 7, 2004, in which she criticized the handling of her compensation claim and asked for help in obtaining documents from the employing establishment, the EEO and other government agencies. She also submitted several responses she received to these letters.

By decision dated October 27, 2005, the Office denied appellant's request for further merit review of her claim on the grounds that her 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 the application for review within one year of the date of that decision.<sup>6</sup> 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>7</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>8</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

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<sup>4</sup> By letter dated October 28, 2003, appellant requested reconsideration of her claim and, by decision dated November 12, 2003, the Office denied her request for further merit review.

<sup>5</sup> In June 2005 appellant appealed her case to the Board, but in a September 6, 2005 order the Board dismissed the appeal on the grounds that it did not have jurisdiction.

<sup>6</sup> 20 C.F.R. § 10.607(a).

<sup>7</sup> *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

<sup>8</sup> *See* 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

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>9</sup>

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.<sup>10</sup> The evidence must be positive, precise and explicit and must manifest on its face that the Office committed an error.<sup>11</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>12</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>13</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>14</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>15</sup>

### ANALYSIS

In August 2001, appellant filed an occupational disease claim alleging that she sustained an emotional condition due to various incidents and conditions at work. By decisions dated February 28 and October 29, 2002, the Office denied her claim on the grounds that she did not establish any compensable employment factors.

In its October 27, 2005 decision, the Office properly determined that appellant filed an untimely request for reconsideration. Her reconsideration request was filed in October 2005, more than one year after the Office's October 29, 2002 decision and, therefore, appellant must demonstrate clear evidence of error on the part of the Office in issuing this decision.

Appellant has not demonstrated clear evidence of error on the part of the Office in issuing its October 29, 2002 decision. She did not submit the type of positive, precise and explicit evidence which manifests on its face that the Office committed an error.

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<sup>9</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>10</sup> See *Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

<sup>11</sup> See *Leona N. Travis*, 43 ECAB 227, 240 (1991).

<sup>12</sup> See *Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

<sup>13</sup> See *Leona N. Travis*, *supra* note 11.

<sup>14</sup> See *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

<sup>15</sup> *Leon D. Faidley, Jr.*, *supra* note 7.

In support of her request, appellant submitted a June 22, 2001 report in which Dr. Yip, an attending Board-certified internist, evaluated her medical condition and other medical reports, dated between July 2001 and December 2003, which detailed her psychiatric condition. However, these medical reports are not relevant to the underlying issue of the present case which is factual in nature, *i.e.*, whether appellant established any compensable employment factors.<sup>16</sup> She submitted letters to congressional representatives and Department of Labor officials from 2004 in which she criticized the handling of her compensation claim and asked for help in obtaining documents. These documents also would not be relevant to the main issue of the present case as they provide no further support in establishing the existence of appellant's claimed employment factors.

For these reasons, the evidence submitted by appellant does not raise a substantial question concerning the correctness of the Office's October 29, 2002 decision and the Office properly determined that she did not show clear evidence of error in that decision.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' October 27, 2005 decision is affirmed.

Issued: April 12, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>16</sup> When a claimant has not established any compensable employment factors in an emotional condition claim, it is not necessary to consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).