United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 06-1394**
	)	**Issued: November 22, 2006**
U.S. POSTAL SERVICE, POST OFFICE, New Albany, IN, Employer	)	

Appearances:
Appellant, 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 June 6, 2006 appellant filed a timely appeal from a May 10, 2006 nonmerit decision of the Office of Workers' Compensation Programs denying his request for reconsideration on the grounds that it was untimely filed and did not establish clear evidence of error. As more than one year has elapsed between the last merit decision dated March 24, 2005 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the May 10, 2006 nonmerit decision.

ISSUE

The issue is whether the Office properly refused to reopen appellant's claim for reconsideration of the merits on the grounds that his request for reconsideration was not timely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On September 24, 2003 appellant, then a 33-year-old letter carrier, filed an occupational disease claim alleging that he sustained anxiety, depression and stress causally related to factors of his federal employment. He did not stop work.

In statements accompanying his claim, appellant related that he injured his neck and shoulder carrying mail on January 25, 2003. He attributed his stress to anxiety and depression due to work restrictions from his employment injury and the "requirement by [his] supervisor to carry the route as designed by him." Appellant asserted that his supervisor, Doug Caswell, pressed him to do more than he could because of his injury. He related that Mr. Caswell's instructions were hard to understand. In a statement dated December 30, 2003, appellant indicated that he experienced conflicts with Mr. Caswell because he chose not to work overtime. He described Mr. Caswell's conduct during a January 4, 2003 route inspection and his refusal to accept medical documentation for appellant's January 25, 2003 injury. Appellant further described actions taken by Tony Conklin, a supervisor, and Mr. Caswell during a March 18, 2003 route inspection. Mr. Caswell threatened his job and made derogatory statements, including telling him that he would be a good carrier if he were faster. Appellant noted that he received a seven-day suspension which was reduced to a letter of warning for failing to follow instructions. He submitted a statement dated January 11, 2004 by Jeff Roudenbush, a coworker and union president, in support of his allegations.

By decision dated January 16, 2004, the Office denied appellant's claim on the grounds that he did not establish an emotional condition in the performance of duty. The Office found that he had not established any compensable employment factors.

On January 26, 2004 appellant requested an oral hearing before an Office hearing representative. At the hearing, held on July 27, 2004, he asserted that Mr. Caswell was hostile toward him because he was not on the overtime list and because of his restrictions from his shoulder injury. Mr. Caswell did not accept his medical documentation on his return to work and told him that he required retraining before another route examination. Appellant followed another carrier on her route and took notes on her delivery style as retraining. He experienced stress because he was not able to perform his full duties because of his injury and because of the demands of meeting deadlines, the threat of loss of employment and the derogatory attitude of Mr. Caswell. Mr. Conklin criticized appellant's performance on the route inspection even though his actions did not constitute violations. He was not allowed to rearrange his park points to accommodate his shoulder injury until May 2003. In a statement submitted at the hearing, appellant indicated that he received a letter of warning on January 16, 2003 for failing to follow instructions and a seven-day suspension on March 27, 2003. He noted that beginning in 2002 the carrier supervisor required that the carriers meet computer projections for their routes. Appellant experienced anxiety trying to meet the requirements due to his shoulder injury. He described his route inspections on February 24 and March 18, 2003 and the criticisms that he received for matters which were not violations.

In a decision dated March 24, 2005, the Office hearing representative affirmed the January 16, 2004 decision. Appellant requested reconsideration by letter dated April 17, 2006. He again described in detail his route examinations of January and March 2003, the actions taken

by Mr. Caswell and Mr. Conklin and the disciplinary action he received. Appellant indicated that he was submitting a statement from a coworker. He also resubmitted reports from his physician the January 10, 2003 letter of warning, the March 24, 2003 notice of suspension and an offer of limited-duty employment dated July 20, 2003.

By decision dated May 10, 2006, the Office denied appellant's request for reconsideration on the grounds that it was not timely filed and failed to present clear evidence of error.

LEGAL PRECEDENT

The Office, through regulation, 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] The Office procedures state 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, if the claimant's application for review shows "clear evidence of error" on the part of the Office.[4] In this regard, the Office will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.[5]

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 substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.[6] 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 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

[1] 5 U.S.C. §§ 8101-8193.

[2] 20 C.F.R. § 10.607; *see also Alan G. Williams*, 52 ECAB 180 (2000).

[3] *Veletta C. Coleman*, 48 ECAB 367 (1997)

[4] *See Gladys Mercado*, 52 ECAB 255 (2001). Section 10.607(b) provides: "[The Office] will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of [it] in its most recent decision. The application must establish, on its face, that such decision was erroneous." 20 C.F.R. § 10.607(b).

[5] *See Nelson T. Thompson*, 43 ECAB 919 (1992).

[6] *Leon J. Modrowski*, 55 ECAB 196 (2004); *Darletha Coleman*, 55 ECAB 143 (2003).

a substantial question as to the correctness of the Office's decision.[7] The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of the Office such that the Office abused its discretion in denying merit review in the face of such evidence.[8]

ANALYSIS

The Office properly determined that appellant failed to file a timely application for review. The Office's procedures provide that the one-year time limitation period for requesting reconsideration begins the date following an original Office decision.[9] A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.[10] In this case, appellant's April 17, 2006 letter requesting reconsideration was submitted more than one year after March 24, 2005, the date of the last merit decision of record, and thus it was untimely. Consequently, he must demonstrate clear evidence of error by the Office in denying his claim for compensation.[11]

Appellant resubmitted physicians' reports dated February 2003 through July 2004. He further resubmitted a July 30, 2005 limited-duty offer from the employing establishment, the January 10, 2003 letter of warning and the March 24, 2003 notice of a seven-day suspension. As this evidence duplicated evidence already in the case record, it is insufficient to establish clear evidence of error.[12] Additionally, the medical evidence is not pertinent as the Office denied his claim because he did not substantiate a compensable work factor. Medical evidence is only relevant to determining whether appellant has an established an employment-related emotional condition when a compensable work factor has been established.[13]

In his request for reconsideration, appellant again described the factors of employment to which he attributed his stress-related condition, including actions taken by Mr. Caswell, the requirement of adhering to times for delivering mail and being improperly punished for poor performance. The Office, however, previously considered appellant's contentions. As his statement was substantially similar to his prior allegations, it essentially repeated evidence already of record. Evidence that repeats or duplicates evidence already of record has no evidentiary value.[14]

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[7] *Id*.

[8] *Pete F. Dorso*, 52 ECAB 424 (2001); *John Crawford*, 52 ECAB 395 (2001).

[9] 20 C.F.R. § 10.607(a).

[10] *Robert F. Stone*, 57 ECAB ___ (Docket No. 04-1451, issued December 22, 2005).

[11] 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB ___ (Docket No. 05-1637, issued October 18, 2005).

[12] *George C. Vernon*, 54 ECAB 319 (2003).

[13] *See Parley A. Clement*, 48 ECAB 302 (1997).

[14] *See Patricia G. Aiken*, 57 ECAB ___ (Docket No. 06-75, issued February 17, 2006).

For these reasons, the evidence submitted by appellant does not raise a substantial question concerning the correctness of the Office's March 24, 2005 decision and the Office properly determined that he did not establish clear evidence of error.[15]

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for reconsideration of the merits on the grounds that his request for reconsideration was not timely 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 May 10, 2006 is affirmed.

Issued: November 22, 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

[15] Appellant indicated that he was submitting a statement by a coworker; however, such a statement is not contained in the case record.