

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

R.B., Appellant)	
)	
and)	Docket No. 08-1504
)	Issued: December 5, 2008
DEPARTMENT OF JUSTICE,)	
U.S. ATTORNEY'S OFFICE,)	
Burnham, FL, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 29, 2008 appellant filed a timely appeal of an April 11, 2008 nonmerit decision of the Office of Workers' Compensation Programs, denying her request for reconsideration. Because more than one year has elapsed from the most recent merit decision, the Board's October 16, 2006 decision, to 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.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration as untimely filed and lacking clear evidence of error.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated October 16, 2006, the Board affirmed Office decisions dated March 16 and May 26, 2006 denying appellant's claim for

compensation benefits.¹ Although appellant had established work factors to which she attributed her condition, she did not submit medical evidence to establish that she sustained an injury due to her federal employment. The law and the facts of the case as set forth in the Board's prior decision are hereby incorporated by reference.²

By letter dated January 28, 2008, appellant requested reconsideration. She noted that she sustained a work-related fall in September or October 2005 and provided a list of witnesses to the alleged fall. Appellant also discussed the medical evidence previously considered by the Office and the Board. She submitted three letters from Blue Cross Blue Shield, addressing a subrogation interest with regard to her claim, and an April 11, 2008 Office letter which informed Blue Cross Blue Shield that her claim had been denied.

By decision dated April 11, 2008, the Office denied appellant's January 28, 2008 request for reconsideration on the grounds that it was untimely filed and failed to establish clear evidence of error.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act³ does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.⁴ The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁵ As one such limitation, it 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.⁶ The Board has found that the imposition of this one-year limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a).⁷

Section 10.607(b) states that the Office will consider an untimely application for reconsideration only if it demonstrates clear evidence of error by the Office in its most recent merit decision. The reconsideration request must establish that the Office's decision was, on its face, erroneous.⁸ To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.⁹ The evidence must be positive, precise and

¹ Docket No. 06-1528 (issued October 16, 2006).

² *Id.*

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8128(a).

⁵ *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁶ 20 C.F.R. § 10.607(a); *see Alberta Dukes*, 56 ECAB 247 (2005).

⁷ *Sean C. Dockery*, 56 ECAB 652 (2005); *Mohamed Yunis*, 46 ECAB 827, 829 (1995).

⁸ 20 C.F.R. § 10.607(b); *see also Donna M. Campbell*, 55 ECAB 241 (2004).

⁹ *Dean D. Beets*, 43 ECAB 1153 (1992).

explicit and must be manifest on its face that the Office committed an error.¹⁰ Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.¹¹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹² 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's decision.¹³ 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.¹⁴

ANALYSIS

The Board finds that the Office properly determined that appellant failed to file a timely application for review. The most recent merit decision with regard to appellant's claim was the Board's decision of October 16, 2006. Appellant's request for reconsideration was dated January 28, 2008, more than one year after October 16, 2006. Accordingly, her request for reconsideration was not timely filed.

The Board finds that appellant has not submitted evidence to establish clear evidence of error on the part of the Office. Appellant's claim was denied due to the insufficiency of the medical evidence to establish that she sustained an injury causally related to her employment. She did not submit any medical evidence with her reconsideration request. Rather, appellant addressed an alleged fall at work and the medical evidence already of record. Her statement with regard to a possible new work injury is not relevant to the underlying issue, which is medical in nature. The correspondence between Blue Cross Blue Shield and the Office is not relevant to this issue. Appellant's arguments with regard to the medical evidence are also not relevant. She did not submit any new medical evidence in support of her request. Appellant has not provided any argument or evidence of sufficient probative value to shift the weight of the evidence in her favor or raise a substantial question as to the correctness of the Office's decision. The Office properly denied appellant's reconsideration request as it did not establish clear evidence of error.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration as it was untimely filed and lacking clear evidence of error.

¹⁰ *Leona N. Travis*, 43 ECAB 227 (1991).

¹¹ *Darletha Coleman*, 55 ECAB 143 (2003).

¹² *Leona N. Travis*, *supra* note 10.

¹³ *Darletha Coleman*, *supra* note 11.

¹⁴ *Pete F. Dorso*, 52 ECAB 424 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 11, 2008 is affirmed.

Issued: December 5, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board