United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant	)	
	)	**Docket No. 07-1950**
and	)	**Issued: February 6, 2008**
U.S. POSTAL SERVICE, BENT TREE POST OFFICE, Coppell, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 17, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' May 31, 2007 nonmerit decision, which denied his request for reconsideration on the grounds that it was untimely filed and failed to establish clear evidence of error. Because more than one year has elapsed from the last merit decision dated November 1, 1995 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 on the grounds that it was untimely filed and did not establish clear evidence of error.

FACTUAL HISTORY

On January 1, 1995 appellant, then a 36-year-old janitor, filed an occupational disease claim alleging that he sustained an emotional condition in January 1992 in the performance of

duty when he was told his job was not important. He received a proposal of removal from his job in July 1992 and was terminated in October 1992.

On November 1, 1995 the Office denied appellant's claim finding that the evidence failed to establish that the claimed injury arose in the performance of duty. The Office found that the work factors identified by appellant were either refuted or did not occur in the performance of duty.

On December 20, 1995 appellant requested reconsideration and submitted additional information.

In a December 21, 1995 nonmerit decision, the Office denied appellant's reconsideration request.

On July 24, 1996 appellant requested reconsideration and submitted additional information.

On August 2, 1996 the Office issued a nonmerit decision denying appellant's reconsideration request.

On October 12, 1996 appellant requested reconsideration.

By nonmerit decision dated November 8, 1996, the Office denied appellant's reconsideration request.

On November 20, 1996 appellant appealed the Office's decision to the Board.

On December 14, 1998 the Board affirmed the Office's nonmerit decision denying appellant's request for reconsideration.[1]

On March 5, 2007 appellant requested reconsideration and submitted copies of previously submitted documents.

In a nonmerit decision dated May 31, 2007, the Office denied reconsideration on the grounds that the request was untimely and did not present clear evidence of error.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act[2] does not entitle a claimant to a review of an Office decision as a matter of right.[3] This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.[4] The Office, through its regulations, has imposed limitations on the exercise of

[1] Docket No. 97-609 (issued December 19, 1998).

[2] 5 U.S.C. § 8128(a).

[3] *Thankamma Mathews*, 44 ECAB 765, 658 (1993).

[4] *Id*. at 768; *see also Jesus D. Sanchez*, 41 ECAB 964, 966 (1990).

its discretionary authority. One such limitation is that the Office will not review a decision denying or terminating a benefit unless the application for reconsideration is filed within one year of the date of that decision.[5] The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).[6]

The Office's regulations provide:

> "[The Office] will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of [the Office] in its most recent merit decision. The application must establish, on its face, that such decision was erroneous."[7]

In those cases where requests for reconsideration are not timely filed, the Office must nevertheless undertake a limited review of the application for reconsideration to determine whether there is clear evidence of error pursuant to the untimely request in accordance with section 10.607(b) of its regulations.[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 explicit and must be manifest on its face that the Office committed an error.[10] Evidence which 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] 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.[13] 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

[5] 20 C.F.R. §§ 10.607, 10.608(b). The Board has concurred in the Office's limitation of its discretionary authority; *see Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon., denied*, 41 ECAB 458 (1990).

[6] 20 C.F.R. § 10.607(b); *Thankamma Mathews*, *supra* note 3 at 769; *Jesus D. Sanchez*, *supra* note 4 at 967.

[7] 20 C.F.R. § 10.607(b).

[8] *Thankamma Mathews*, *supra* note 3 at 770.

[9] *Id*.

[10] *Leona N. Travis*, 43 ECAB 227, 241 (1991).

[11] *Jesus D. Sanchez*, *supra* note 4 at 968.

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

[13] *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

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.[14]

ANALYSIS

The Board finds that the Office properly denied appellant's request for reconsideration as untimely. The implementing federal regulations provide that a request for reconsideration must be filed within one year from the date of the Office decision for which review is sought.[15] The most recent merit decision was the Office's November 1, 1995 decision denying appellant's occupational disease claim. As appellant's March 5, 2007 reconsideration request was made more than one year following the November 1, 1995 decision, it was untimely filed. Consequently, to have his claim reopened, appellant must show clear evidence of error by the Office in its November 1, 1995 decision.

The Board finds that appellant has not presented evidence establishing that the Office's decision was erroneous or which raises a substantial question as to the correctness of the Office's decision. The Office found that appellant did not establish any compensable factors of employment. The documents submitted are duplicative of evidence already of record. This evidence does not shift the weight of the evidence of record or establish compensable factors of employment. Appellant has not established clear evidence of error.

Accordingly, the Board finds that appellant has not established clear evidence of error as it is of insufficient probative value to raise a substantial question as to the correctness of the Office's decision denying the claim.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration as it was untimely filed and did not present clear evidence of error.

[14] *Leon D. Faidley, Jr.*, 41 ECAB 104, 114 (1989).

[15] 20 C.F.R. § 10.607(a).

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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