

Dr. Morton Meltzer, a Board-certified psychiatrist, advised that appellant sustained an exacerbation of depression and bipolar disorder due to work stress. The Office initially denied the claim on March 9, 2005.

Appellant, through her attorney, requested reconsideration on December 14, 2006 and submitted additional medical and factual evidence. Pursuant to an Equal Employment Opportunity Commission (EEOC) claim, an EEOC administrative law judge issued a decision dated July 26, 2006 which found that appellant qualified as an individual with a disability who requested a reasonable accommodation and that the employing establishment discriminated against her when it stopped accommodating her and sent her home on November 1, 2004. Appellant was awarded back pay of approximately \$32,500.00, nonpecuniary damages of \$75,000.00 and attorney's fees. In a notice of final action dated September 21, 2006, the employing establishment implemented the EEOC's decision.

By decision dated March 16, 2007, the Office denied appellant's request for reconsideration on the grounds that her request was untimely filed and she did not show clear evidence of error.

LEGAL PRECEDENT

The Office, through regulations, 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 Office procedures state that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth section 10.607 of Office regulations,⁴ if the claimant's application for review shows "clear evidence of error" on the part of the Office. 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. 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

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.607(b); *see* 5 U.S.C. § 8128(a); *Gladys Mercado*, 52 ECAB 255 (2001).

³ *Cresenciano Martinez*, 51 ECAB 322 (2000).

⁴ 20 C.F.R. § 10.607.

⁵ *Alberta Dukes*, 56 ECAB 247 (2005).

and whether the new evidence demonstrates clear error on the part of the Office. To show clear evidence of error, the evidence submitted 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. The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of the Office.⁶

ANALYSIS

The Board finds that, as more than one year had elapsed from the date of issuance of the last merit decision in this case, the March 9, 2005 decision of the Office, appellant's request for reconsideration on December 14, 2006 was untimely filed. Consequently, appellant must demonstrate clear evidence of error by the Office in denying her claim for compensation.⁷

In this case, with her December 14, 2006 reconsideration request, appellant submitted additional factual and medical evidence including a July 26, 2006 EEOC decision finding that the employing establishment discriminated against her. In its March 16, 2007 decision, without discussing the evidence submitted, the Office found that appellant did not establish clear evidence of error.

The Board finds that the Office failed to properly adjudicate appellant's reconsideration request. The underlying issue in this case is whether appellant met her burden of proof to establish that she sustained an emotional condition causally related to factors of her federal employment. On reconsideration, she submitted additional medical evidence and a July 26, 2006 EEOC decision, rendered more than one year after the Office's March 9, 2005 decision. The EEOC decision found that the employing establishment discriminated against appellant. In its March 16, 2007 decision, the Office did not discuss the evidence submitted on reconsideration and thus did not satisfy its obligation to provide a decision with appropriate findings and clearly stated reasons. The case will be remanded to the Office for an appropriate decision that properly considers the evidence submitted in this claim on the issue of clear evidence of error.⁸

CONCLUSION

The Board finds that the Office failed to properly adjudicate the clear evidence of error issue presented.

⁶ *Nancy Marcano*, 50 ECAB 110 (1998).

⁷ 20 C.F.R. § 10.607(b).

⁸ *Tonja R. Hiebert*, 55 ECAB 706 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 16, 2007 is set aside and the case is remanded to the Office for proceedings consistent with this decision of the Board.

Issued: February 5, 2008
Washington, DC

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

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

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