

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

L.J., Appellant)
and) Docket No. 07-1182
U.S. POSTAL SERVICE, POST OFFICE,) Issued: November 3, 2008
Little Rock, AR, Employer)
)

Appearances:

James W. Stanley, Jr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 28, 2007 appellant filed a timely appeal from the September 25, 2006 and March 14, 2007 nonmerit decisions of the Office of Workers' Compensation Programs, which denied her requests for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review those denials. The Board has no jurisdiction to review the Office's September 1, 2004 merit decision denying her March 25, 2003 claim for compensation, as she filed her appeal to the Board more than one year after the date of that decision.

ISSUE

The issue is whether the Office properly denied appellant's July 12, 2005 and October 26, 2006 requests for reconsideration.

FACTUAL HISTORY

On March 25, 2003 appellant, then a 52-year-old clerk, filed an occupational disease claim alleging that harassment by her supervisor and marketing manager caused her stress. On

June 12, 2003 the Office denied her claim on the grounds that she failed to establish a compensable factor of employment:

“The evidence of file indicates that you were dissatisfied with your relocation, your supervisor’s management style, and you filed a grievance because your supervisor changed your sick leave to leave without pay. Your relocation indicates a desire to work in a particular environment. Your dislike of your management style indicated that your emotional reaction is self-generated and is not compensable. You did not provide any evidence to support that agency abuse as a result of the grievance you filed.”

The Office again reviewed the merits of appellant’s case on October 28, 2003, January 23 and September 1, 2004. With each merit review, it denied modification of its prior decision. In its September 1, 2004 merit decision, the Office found that appellant failed to substantiate her allegations. It added: “Although the August 2, 2004 medical report does discuss your condition and offers an opinion with regard to some relationship to your employment, until such time as you have established a compensable factor of employment the Office is not required to review or develop the medical evidence of record.” In the appeal rights attached to the September 1, 2004 decision, the Office notified appellant that she had one-calendar year from the date of the decision to request reconsideration.

Appellant requested reconsideration on July 12, 2005. She submitted nothing to support this request. Over a year later, the Office received emergency room records from March 2006. In a decision dated September 25, 2006, it denied appellant’s request for reconsideration on the grounds that her request neither raised substantive legal questions nor included new and relevant evidence.

On October 26, 2006 appellant, through her attorney, argued that she had submitted new and material proof and she requested a reconsideration decision on the medical evidence she previously filed. She submitted a November 2, 2004 medical report and an October 18, 2005 chart note. Appellant repeated her request on November 7, 2005 and again on January 10, 2007.

In a decision dated March 14, 2007, the Office denied appellant’s request for reconsideration on the same grounds, that her request neither raised substantive legal questions nor included new and relevant evidence. Appellant, through her attorney, now appeals the Office’s March 14, 2007 decision.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the

“application for reconsideration.”¹ An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.²

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.³

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁴

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.⁵

ANALYSIS

The most recent decision on the merits of appellant’s March 25, 2003 claim for compensation is the Office’s September 1, 2004 decision denying benefits. Appellant had one year, or until September 1, 2005, to request reconsideration of that decision. Her July 12, 2005 request was therefore timely, but she submitted nothing to support her request. Appellant made no substantive legal argument, she submitted no evidence whatsoever. On its face, then, her request was insufficient to warrant a reopening of her case for further adjudication on the merits. The Office did receive some medical documents a year later, but medical evidence is not relevant to the denial of appellant’s claim. As the Office explained in its September 1, 2004 decision, there was no need to review the medical evidence on causal relationship because appellant had not yet met her burden of establishing as a factual matter that her claim fell within the scope of workers’ compensation. Because her July 12, 2005 request for reconsideration does not meet at least one of the three standards for obtaining a merit review of her case, the Board will affirm the Office’s September 25, 2006 decision denying that request.

¹ 20 C.F.R. § 10.605 (1999).

² *Id.* at § 10.607(a).

³ *Id.* at § 10.606.

⁴ *Id.* at § 10.608.

⁵ *Id.* at § 10.607.

As the Board noted earlier, appellant had until September 1, 2005 to request reconsideration of the Office's September 1, 2004 decision denying her claim for compensation. Her October 26, 2006 request for reconsideration missed this deadline by more than a year. The proper standard of review, therefore, is whether this untimely request shows clear evidence of error in the Office's September 1, 2004 decision, or in other words, whether the untimely request shows on its face that the September 1, 2004 decision was erroneous.

The Office correctly found that appellant's request neither raised substantive legal questions nor included new and relevant evidence. Because medical evidence was not an issue in the Office's September 1, 2004 merit decision, her October 26, 2006 request for reconsideration does not show clear evidence of error. Neither the November 2, 2004 medical report nor the October 18, 2005 chart note nor any of the evidence appearing in the record since the Office's September 1, 2004 denial of compensation shows that the denial was unwarranted. Because appellant's October 26, 2006 request for reconsideration does not meet the standard for obtaining a merit review of her case, the Board will affirm the Office's March 14, 2007 decision denying that request.

CONCLUSION

The Board finds that the Office properly denied appellant's July 12, 2005 and October 26, 2006 requests for reconsideration. These requests did not meet the standards for obtaining a merit review of her case.

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2007 and September 25, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 3, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board