United States Department of Labor
Employees' Compensation Appeals Board

J.F., Appellant	)	
and	)	**Docket No. 08-917**
	)	**Issued: August 19, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Portland, ME, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 7, 2008 appellant filed a timely appeal from a January 24, 2008 nonmerit decision of the Office of Workers' Compensation Programs denying his request for reconsideration as it was untimely and did not establish clear evidence of error. As there is no merit decision within one year of the filing of this appeal, the Board lacks jurisdiction to review the merits of this case.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the January 24, 2008 nonmerit decision.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration on the grounds that it was not timely and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On September 24, 1994 appellant, then a 45-year-old mail handler, filed a claim for an injury to his left ankle and low back occurring on that date in the performance of duty. The

[1] 20 C.F.R. §§ 501.2(c), 501.3.

Office accepted the claim, assigned file number xxxxxx440, for muscle spasms of the back. It paid him compensation for lost premium pay from October 5, 1994 to February 25, 1995. Appellant had previously sustained a low back injury on October 20, 1985, assigned file number xxxxxx946.[2] The Office combined all accepted claims into master file number xxxxxx946.

On August 12, 1999 appellant filed a recurrence of disability claim on December 19, 1997 due to his September 24, 1994 work injury. He indicated that he was "permanently unemployable" beginning December 19, 1997.

By decision dated December 10, 1999, the Office found that appellant failed to establish a recurrence of disability as of December 19, 1997 as the medical evidence did not establish that his current condition and disability were causally related to his September 24, 1994 employment injury.

In a decision dated September 6, 2000, a hearing representative affirmed the December 10, 1999 decision. By decision dated February 21, 2000, a hearing representative modified the September 6, 2000 decision to consider additional evidence and again affirmed the September 6, 2000 decision.

In a decision dated July 30, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was immaterial and thus insufficient to warrant reopening the case for merit review. On November 23, 2001 it denied modification of its prior merit decision. By decision dated April 11, 2002, the Office denied appellant's request to reopen his case for further merit review. In a decision dated March 27, 2003, it again denied modification of its November 23, 2001 decision.

On November 1, 2007 appellant again requested reconsideration. He contended that both the witness statements and the medical evidence supported that he was unable to perform his work duties since the time of his work injury on September 24, 1994. Appellant asserted that he worked until December 19, 1997 in the union office performing no duties. The employing establishment forced him to retire on December 19, 1997. Appellant obtained disability from the Social Security Administration which he maintained established that he was unable to work.

With his request for reconsideration, appellant submitted evidence relevant to a third-party recovery. He also resubmitted witness statements already of record and numerous medical reports from his attending physicians, including Dr. Sam Nawfel, an osteopath; Dr. John Pier, a Board-certified physiatrist; and Dr. Stephen D. Rioux, a Board-certified neurologist. Appellant further submitted a report dated September 6, 2007 from Dr. Laun R. Hallstrom, a Board-certified physiatrist, who described the September 24, 1994 work injury. Dr. Hallstrom related that his office treated appellant beginning August 2005 for fibromyalgia, cervical region pain and lateral epicondylitis. He found that appellant continued to have work restrictions due to his employment injury and was "unable to return to his time-of-injury job at the [employing establishment]."

By decision dated January 24, 2008, the Office denied appellant's request for reconsideration on the grounds that it was untimely and did not establish clear evidence of error.

[2] He also experienced work injuries in 1989.

LEGAL PRECEDENT

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a) of the Federal Employees' Compensation Act.[3] As once such limitations, 20 C.F.R. § 10.607, provides that an application for reconsideration must be sent within one year of the date of the Office decision for which review is sought. The Office will consider an untimely application only if the application demonstrates clear evidence on the part of the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.[4]

The term 'clear evidence of error' is intended to represent a difficult standard. The claimant must present evidence which on its face shows that the Office made an error (for example, proof of a miscalculation in a schedule award). Evidence such as a detailed, well-rationalized medical report which, if submitted prior to the Office's denial, would have created a conflict in medical opinion requiring further development, is not clear evidence of error and would not require a review of the case on the Director's own motion.[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.[6]

ANALYSIS

The Office properly determined that appellant failed to file a timely application for review. Its procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision.[7] A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.[8] As appellant's November 1, 2007 request for reconsideration was submitted more than one year after the last merit decision on March 27, 2003, it was untimely. Consequently, he must demonstrate clear evidence of error by the Office in denying his claim for compensation.[9]

In his November 1, 2007 reconsideration request, appellant asserted that the statements from his coworkers and supervisors established that he was disabled from employment. The witness statements, however, are not relevant to the underlying issue of whether he sustained a

[3] 5 U.S.C. §§ 8101-8193.

[4] 20 C.F.R. § 10.607.

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (April 1991).

[6] *Robert F. Stone*, 57 ECAB 292 (2005); *Leon D. Modrowski*, 55 ECAB 196 (2004); *Darletha Coleman*, 55 ECAB 143 (2003).

[7] 20 C.F.R. § 10.607(a).

[8] *Robert F. Stone*, *supra* note 6.

[9] 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

recurrence of disability beginning December 19, 1997. As this issue is medical in nature, it can only be resolved through the submission of medical evidence.[10]

Appellant submitted numerous medical reports which the Office had previously determined to be insufficient to establish employment-related disability beginning December 19, 1997. As this evidence duplicated evidence already of record, it is insufficient to establish clear evidence of error absent showing the Office erred in its evaluation of the evidence.[11] Appellant generally alleged that the previously submitted medical reports established that he was disabled but did not make any specific argument describing how he believed that the Office erred in its evaluation of these reports. Consequently, he has not shown clear evidence of error.

In a report dated September 6, 2007, Dr. Hallstrom reviewed appellant's history of a work injury on September 24, 1994. He noted that his office treated him for fibromyalgia, cervical region pain and lateral epicondylitis. Dr. Hallstrom opined that appellant was unable to perform his regular employment and had continued restrictions due to his accepted work injury. The term "clear evidence of error" is intended to represent a difficult standard. The submission of a detailed well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.[12] Dr. Hallstrom's report does not manifest on its face that the Office committed an error in finding that appellant did not establish an employment-related recurrence of disability and thus does not show clear evidence of error.

Appellant contended that the employing establishment forced him to retire. The Office previously considered this argument and he has not explained how or why the Office erred in its evaluation of his argument. Appellant also maintained that obtaining retirement from the Social Security Administration shows that he is disabled from employment. The Board has long held, however, that entitlement to benefits under statutes administered by other federal agencies does not establish entitlement to benefits under the Act.[13]

The evidence submitted by appellant is not sufficient to raise a substantial question regarding the correctness of the Office's last merit decision; consequently, he has not shown clear evidence of error.

On appeal appellant contends that Dr. Hallstrom's report and the evidence from Dr. Nawfel shows that he was disabled after his work injury. As discussed above, however, the medical evidence submitted is insufficient to establish on its face that the Office committed an error in finding he did not establish a recurrence of disability. Appellant also argues that obtaining disability from the Social Security Administration establishes that he is disabled. As

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

[11] *Id*.

[12] *Joseph R. Santos*, 57 ECAB 554 (2006).

[13] *Id*.

noted above, entitlement to benefits under statutes administered by other federal agencies does not establish entitlement to benefits under the Act.[14]

Appellant further explained that he was unable to timely request reconsideration of the Office's decision due to cancer treatment. Section 10.607(a), however, is unequivocal in setting forth the time limitation period of one year and does not indicate that late filing may be excused by extenuating circumstances.[15]

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration on the grounds that it was not timely and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 24, 2008 is affirmed.

Issued: August 19, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[14] *Id*.

[15] 20 C.F.R. § 10.607(c); *Donald Booker-Jones*, 47 ECAB 685 (1996). The Office's regulations do provide that the time to file a request for reconsideration shall not include any periods subsequent to the decision for which the claimant can establish through probative medical evidence that he was unable to communicate in any way and her testimony is necessary to obtain modification. Appellant has not submitted such evidence. *See John Crawford*, 52 ECAB 395 (2001).