United States Department of Labor
Employees' Compensation Appeals Board

J.U., Appellant	)	
and	)	**Docket No. 08-1478**
	)	**Issued: March 9, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Whitter, CA, Employer	)	

Appearances:
Linda Temple, 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 April 25, 2008 appellant filed a timely appeal from a February 25, 2008 nonmerit decision of the Office of Workers' Compensation Programs denying his request for reconsideration. Because more than one year has elapsed from the merit decision dated November 8, 2006 to the filing of this appeal on April 25, 2008, 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 refused to reopen appellant's claim for reconsideration of the merits on the grounds that his February 7, 2008 request was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On September 7, 2006 appellant, a 44-year-old letter carrier, filed a traumatic injury claim for a lower back injury he sustained on April 2, 2005 while carrying three parcels and a satchel of mail up a flight of stairs.

The employing establishment controverted appellant's claim, stating that he had already filed a Form CA-2a for the same date and injury and noted that he repeatedly changed his allegations, finding it impossible to determine the nature, degree and extent of his injury.[1]

In a letter dated September 27, 2006, the Office advised appellant that further information was required to establish his claim, including evidence that established the incident or employment factor alleged to have caused the injury, a diagnosis of his condition and a medical opinion as to how his alleged injury resulted in the diagnosed condition.

By decision dated November 8, 2006, the Office denied appellant's traumatic injury claim because the evidence submitted was insufficient to establish that he sustained an injury as defined by the Federal Employees' Compensation Act at the time, place and in the manner alleged.[2]

By letter dated February 7, 2008, appellant requested reconsideration of the November 8, 2006 decision denying his claim for a work-related injury. In support of his request, he submitted a November 9, 2007 medical report of Dr. Bassam Yassine, Board-certified in family medicine, who noted a history of an April 2, 2005 injury while delivering mail and diagnosed appellant with lumbar strain.

By decision dated February 25, 2008, the Office denied appellant's reconsideration request because it was not made within the one-year time period prescribed by 20 C.F.R. § 10.138(2) and the evidence did not demonstrate that the Office had committed clear evidence of error.

LEGAL PRECEDENT

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must file his application for review within one year of the date of that decision.[3] The Board has found that the imposition of the one-year limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a) of the Act.[4]

The Office, however, may not deny an application for review solely on the grounds that the application was not timely filed. When an application for review is not timely filed, the Office must nevertheless undertake a limited review to determine whether the application establishes clear evidence of error.[5] Office regulations and procedure provide that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set

[1] The record reflects that on April 13, 2005 appellant filed a recurrence claim (Form CA-2a) for an alleged June 9, 2004 lower back injury. The Office denied that claim on August 4, 2004.

[2] On January 18, 2007 the Office advised appellant that he was not entitled to continuation of pay as his claim had been denied.

[3] 20 C.F.R. § 10.607(a).

[4] 5 U.S.C. § 2128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

[5] *See* 20 C.F.R. § 10.607(b); *Cresenciano Martinez*, 51 ECAB 322 (2000).

forth in 20 C.F.R. § 10.607(a), if the claimant's application for review shows clear evidence of error on the part of the Office.[6]

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.[7] The evidence must be positive, precise and explicit and must manifest on its face that the Office committed an error.[8] 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 and whether the new evidence demonstrates clear error in the most recent merit decision. To show clear evidence of error, the evidence submitted must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of the decision. The Board makes an independent determination of whether a claimant has submitted clear evidence of error.[9]

ANALYSIS

In its February 25, 2008 decision, the Office properly determined that appellant filed an untimely request for reconsideration. The merit decision denying appellant's claim was dated November 8, 2006. Appellant requested reconsideration on February 7, 2008. Thus, the reconsideration request is untimely as it was made outside the one-year time limit.

The Board also finds that appellant's February 7, 2008 request for reconsideration failed to demonstrate clear evidence of error. Appellant's claim was denied because he did not establish that he sustained an injury at the time, place and in the manner alleged. In connection with his request for reconsideration, he submitted an unsigned medical report purportedly from Dr. Yassine, which provided a diagnosis of lumbar sprain. This evidence does not address the underlying issue in this case, that is, whether appellant sustained an injury at the time, place and in the manner alleged. Furthermore, the Board has held that an unsigned medical report with no adequate indication that it was completed by a physician is not considered probative medical evidence.[10] For these reasons, the Office properly determined that appellant's request for reconsideration did not establish clear evidence of error.

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[6] 20 C.F.R. § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations,* Chapter 2.1602.3d (January 2004). Office procedure further provides that 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 that a schedule award was miscalculated). Evidence such as 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. *Id*. at Chapter 2.1602.3c.

[7] *See Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

[8] *See Leona N. Travis*, 43 ECAB 227, 240 (1991).

[9] *Nancy Marcano*, 50 ECAB 110 (1998).

[10] *See D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

CONCLUSION

The Board finds appellant's untimely request for reconsideration did not establish clear evidence of error on the part of the Office.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated February 25, 2008 is affirmed.

Issued: March 9, 2009
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