United States Department of Labor
Employees' Compensation Appeals Board

S.V., Appellant	)	
and	)	**Docket No. 08-1726**
	)	**Issued: March 25, 2009**
U.S. POSTAL SERVICE, TERMINAL ANNEX, Seattle, WA, 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 June 4, 2008 appellant filed a timely appeal from the May 12, 2008 nonmerit decision of the Office of Workers' Compensation Programs, which denied reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this denial.

ISSUE

The issue is whether the Office properly denied appellant's April 18, 2008 request for reconsideration on the grounds that it was untimely filed and failed to present clear evidence of error.

FACTUAL HISTORY

On a prior appeal of this case,[1] the Board noted that appellant, a former laborer/custodian, filed a claim alleging that his job stress, problems with interpersonal relationships, insomnia and chest pains were a result of his federal employment. The Office denied his claim on July 10,

[1] Docket No. 04-674 (issued May 11, 2004).

1987 and again on October 17, 1988, finding that the weight of the medical evidence rested with the opinion of the impartial medical specialist and established that appellant sustained no stress-related condition causally related to factors of his federal employment. Appellant unsuccessfully sought reconsideration of his claim. The Board found that his September 11, 2003 request was untimely and failed to demonstrate clear evidence of error in the Office's October 17, 1988 decision. The facts of this case, as set out in the Board's prior decision, are hereby incorporated by reference.

On April 18, 2008 appellant requested reconsideration "in regards to the denial of my appeal dated December 7th, 2008." [sic] He contended that the Board broke protocol regarding his appeal by not requesting his files from the district Office in Seattle. Appellant maintained it was a well-documented fact that he was considered disabled for work and had a significant handicap disorder. He stated that he was subject to a great deal of emotional stress on the job, in the line of duty, where firearms were present on a daily basis. Appellant stated that he received daily physical and emotional abusive threats from supervisors. He noted that certain medical reports were sent in 1983 but did not reach the Office until 1986. Appellant argued that he was not responsible for the inconsistency of the mailing and filing of these medical reports. He submitted no documentation to support his request.

In a decision dated May 12, 2008, the Office denied appellant's request for reconsideration. It found that the request was untimely and failed to present clear evidence of error.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease or, increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."[2]

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, 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 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.[3]

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[2] 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.607 (1999).

The term "clear evidence of error" is intended to represent a difficult standard.[4] If clear evidence of error has not been presented, the Office should deny the application by letter decision, which includes a brief evaluation of the evidence submitted and a finding made that clear evidence of error has not been shown.[5]

ANALYSIS

The merits of this case are not before the Board. To resolve a conflict in medical opinion, the Office referred appellant, together with his entire case record and a statement of accepted facts, to a Board-certified psychiatrist for an impartial medical evaluation.[6] On July 10, 1987 and again on October 17, 1988, it found that the well-rationalized opinion of the impartial medical specialist represented the weight of the medical opinion evidence and established that appellant did not sustain a stress-related condition causally related to his employment.

The Office's October 17, 1988 decision, was the most recent decision on the merits of appellant's case. Appellant had one year from the date of that decision, or until October 17, 1989, to request reconsideration. His April 18, 2008 request is therefore almost 20 years too late. It is his burden to establish clear evidence of error in the Office's October 17, 1988 decision. This is intended to be a difficult standard. Appellant must submit evidence which establishes on its face that the Office's October 17, 1988 decision was erroneous.

There is nothing in appellant's April 18, 2008 request for reconsideration that shows error in the Office's October 17, 1988 decision. He did not address the Office's October 17, 1988 decision or the report of the impartial medical specialist. Appellant spoke instead of a December 7, 2008 denial of his appeal. He contended that the Board had broken protocol by not requesting his files from the district Office in Seattle. Perhaps appellant was speaking of another Board. This Board issued no such denial.

Appellant claimed that he was subject to a great deal of emotional stress on the job, in the line of duty, where firearms were present on a daily basis. He claimed that he received daily physical and emotional abusive threats from supervisors, but as the Board explained in its May 11, 2004 decision, the underlying issue in appellant's case is strictly a medical one. The Office denied compensation finding that the weight of the medical opinion evidence established that he did not sustain a stress-related condition causally related to his employment.

Appellant noted that certain medical reports were sent in 1983 but did not reach the Office until 1986. He argued that he was not responsible for the inconsistency of the mailing and

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[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3.c (January 2004).

[5] *Id*. at Chapter 2.1602.3.d(1).

[6] *See* 5 U.S.C. § 8123(a) (if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination); *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980) (when there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight).

filing of these medical reports. However, it would appear that the Office received these reports and considered them in the 1987 and 1988 merit decisions. Any delayed receipt does not establish clear evidence of error.

Because appellant's April 18, 2008 request for reconsideration was untimely and failed to demonstrate clear evidence of error on the part of the Office in its October 17, 1988 decision, the Board finds that the Office properly denied his request. The Board will affirm the Office's May 12, 2008 decision.

CONCLUSION

The Board finds that the Office properly denied appellant's April 18, 2008 request for reconsideration on the grounds that it was untimely filed and failed to present clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the May 12, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 2009
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