

United States Department of Labor
Employees' Compensation Appeals Board

_____)
P.P., Appellant)
)
and) **Docket No. 09-1961**
) **Issued: May 17, 2010**
)
DEPARTMENT OF HEALTH & HUMAN)
SERVICES, SOCIAL SECURITY)
ADMINISTRATION, San Bernardino, CA,)
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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 27, 2009 appellant filed a timely appeal from the July 15, 2009 nonmerit decision of the Office of Workers' Compensation Programs, which denied reconsideration of her case. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review that denial.

ISSUE

The issue is whether the Office properly denied appellant's April 13, 2009 request for reconsideration.

FACTUAL HISTORY

On June 1, 1998 appellant, then a 44-year-old legal assistant, filed a claim asserting that a torn ligament in her right thumb was a result of her federal employment. The Office accepted her claim for aggravation of osteoarthritis in the metacarpophalangeal joint of the right thumb

and authorized an arthrodesis of the thumb with bone graft. Appellant received benefits, including a schedule award for a 17 percent permanent impairment of her right upper extremity. The Office denied an increased schedule award on October 14, 2003.

In a decision dated May 19, 2006, the Office denied appellant's claim that she sustained a recurrence of disability on February 15, 2005 causally related to her accepted right thumb injury. On June 30, 2006 it reviewed the merits of her case and denied modification of its prior decision. The Board reviewed the matter and, on March 14, 2007, affirmed the Office's decisions. The Board found that the contemporaneous medical opinion evidence did not support that appellant was disabled for work, and later medical opinion evidence supporting disability was not well rationalized and appeared to rely on the unsubstantiated history appellant provided.¹

On September 19, 2007 appellant requested reconsideration of the Office's October 14, 2003 decision to deny an increased schedule award.

In a decision dated November 21, 2007, the Office denied her request as untimely. It found appellant did not present clear evidence of error in the October 14, 2003 decision. Appellant appealed to the Board but then requested the appeal be dismissed. On April 10, 2009 the Board granted her request and issued an order dismissing the appeal.²

On April 13, 2009 appellant requested reconsideration and indicated she had new evidence to submit. She later submitted CA-7 forms claiming compensation for wage loss from March 28, 2005 to January 16, 2007, together with forms claiming a schedule award. On May 27, 2009 appellant asked the Office to accept these forms as timely: "I am entitled to some type of compensation for my supervisor failing to follow my doctor's work restrictions, wrongful termination, and being traumatized for the wrongful termination. I am looking into some type of training to help me find another job."

On June 3, 2009 the Office advised appellant that the periods claimed were previously adjudicated and denied, and that the act of resending claims for prior periods did not afford her additional appeal rights. "No further action will be taken on these claims." With respect to the claims for a schedule award, the Office separately advised appellant of the medical information necessary to show an increased impairment.³

In a decision dated July 15, 2009, the Office denied appellant's April 13, 2009 request for reconsideration as untimely. It found that appellant did not present clear evidence of error.

On appeal, appellant does not agree with the Office's decision.

¹ Docket No. 06-1625 (issued March 14, 2007).

² Docket No. 08-1509 (issued April 10, 2009).

³ As this aspect of appellant's claim is in an interlocutory posture, it is not before the Board on this appeal. See 20 C.F.R. § 501.2(c)(2).

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 --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”⁴

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.⁵

The term “clear evidence of error” is intended to represent a difficult standard.⁶ 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.⁷

The one-year period for requesting reconsideration begins on the date of the original decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board and any merit decision following action by the Board, but does not include prerecoupment hearing decisions.⁸

ANALYSIS

The only issue on this appeal is whether the Office properly denied appellant's April 13, 2009 request for reconsideration. The Office denied it on July 15, 2009. Appellant filed a timely appeal of that decision. There is no other decision before the Board. The Board has no jurisdiction to review any decision denying appellant's claim that she sustained a recurrence of disability or any claim of wage loss for any specific period. The Board has no jurisdiction to

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.607.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3.c (January 2004).

⁷ *Id.* at Chapter 2.1602.3.d(1).

⁸ *Id.* at Chapter 2.1602.3.b(1) (January 2004).

review appellant's complaints that her supervisor failed to follow her doctor's work restrictions, that she was wrongfully terminated or that she was traumatized by a wrongful termination. The only issue the Board may decide is whether the Office properly denied her April 13, 2009 request for reconsideration.

The most recent decision on the merits of her case was the Board's March 14, 2007 decision, which affirmed the Office's May 19 and June 30, 2006 decisions denying her claim that she sustained a recurrence of disability on or about February 15, 2005. Appellant had one year from the date of the Board's decision, or until March 14, 2008, to ask the Office to reconsider her recurrence claim. Her April 13, 2009 request for reconsideration is therefore untimely.

Because appellant made an untimely request for reconsideration, her request must show, on its face, clear evidence of error in the Office's decision. Her April 13, 2009 correspondence simply requested reconsideration. Appellant made no argument for error in any prior Office decision and she submitted no evidence to clearly show error by the Office in denying her recurrence claim. Because her untimely request on April 13, 2009 does not, on its face, establish error in any previous merit decision by the Office, the Board finds that the Office properly denied her request. Appellant is not entitled as a matter of right to a reopening and merit review of her case. The Board will affirm the Office's July 15, 2009 decision.

CONCLUSION

The Board finds that the Office properly denied appellant's April 13, 2009 request for reconsideration. The request was untimely and failed to present clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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