

FACTUAL HISTORY

On June 19, 1998 appellant, then a 43-year-old automotive mechanic, filed a claim (Form CA-2) for job-related stress, anxiety and depression, which reportedly arose on or about June 16, 1997. He was diagnosed with major depressive disorder. Appellant claimed to have been harassed by his supervisors. The alleged incidents included unwarranted discipline, threats of termination, harassment for attending medical appointments and repeated failures to convey personal messages from appellant's spouse. Appellant also noted that his supervisors once called the police on his wife.

The employing establishment submitted several statements regarding a June 13, 1997 incident at the vehicle maintenance facility (VMF) that involved appellant's spouse and the police. The alleged trespassing incident occurred on a Friday afternoon and the following Monday (June 16, 1997) appellant called in sick. He did not return to work.³ OWCP also received documentation from the employing establishment regarding various time and attendance issues, and related disciplinary actions, including a November 13, 2007 notice of proposed removal for unsatisfactory performance.

By decision dated December 15, 1998, OWCP denied appellant's emotional condition claim because he failed to establish a compensable employment factor.⁴

After almost nine years of inactivity, appellant filed a notice of recurrence (Form CA-2a) regarding his alleged injury of June 16, 1997. On October 25, 2007 OWCP acknowledged receipt of a September 4, 2007 notice of recurrence and advised that the underlying emotional condition claim had been denied on December 15, 1998. It enclosed a copy of its December 15, 1998 decision, and informed appellant that he would have to pursue the appeal rights associated with the decision.⁵

Appellant contacted OWCP again in July 2010 to inquire about the status of his emotional condition claim. He was unaware that his claim had been denied. During a July 22, 2010 telephone conversation, OWCP advised appellant to submit a written request for another copy of the December 15, 1998 decision.

On July 6, 2011 appellant requested reconsideration. He claimed not to have received OWCP's December 15, 1998 decision. Appellant explained that in December 1997 he lost his home to foreclosure. He filed a change of address form with the postal service, but the December 15, 1998 decision apparently had not been forwarded to his new residence. In support of his request for reconsideration, appellant submitted evidence regarding the 1997 home foreclosure. He also submitted additional medical evidence and information regarding his OPM

³ The Office of Personnel Management (OPM) granted a disability retirement effective June 22, 1998.

⁴ OWCP mailed the December 15, 1998 decision to appellant's address of record. Appellant provided this mailing address on his original June 19, 1998 Form CA-2. OWCP had also sent an October 1, 1998 claim development letter to appellant's home address in Kyle, TX.

⁵ The October 25, 2007 correspondence was addressed to a P.O. Box in Lockhart, TX, as noted on appellant's September 4, 2007 Form CA-2a.

disability retirement. Appellant submitted duplicate copies of various employment-related documents he characterized as “harassment documents.”

By decision dated August 15, 2011, OWCP denied appellant’s request for reconsideration. It noted it had mailed the December 15, 1998 decision to his last known address and the decision had not been returned as undeliverable; therefore, it was presumed to have been received by appellant. OWCP further found that appellant’s request for reconsideration was untimely and he did not establish clear evidence of error with respect to the December 15, 1998 denial of his emotional condition claim.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁶ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁷ One such limitation is that the application for reconsideration must be sent within one year of the date of the merit decision for which review is sought.⁸ When a request for reconsideration is untimely, OWCP will undertake a limited review to determine whether the application presents “clear evidence of error” on the part of OWCP in its “most recent merit decision.”⁹

ANALYSIS

Appellant’s request for reconsideration was dated July 6, 2011, which is more than a year after OWCP’s December 15, 1998 merit decision. He claimed not to have received the decision when it was issued. In the absence of evidence to the contrary, it is presumed that a notice mailed in the ordinary course of business was received in due course by the intended recipient.¹⁰ This presumption is commonly referred to as the “mailbox rule.”¹¹ It arises when the record reflects that the notice was properly addressed and duly mailed.¹²

OWCP mailed the December 15, 1998 decision to appellant’s last known address in Kyle, TX, which he noted on his June 19, 1998 Form CA-2.¹³ Appellant indicated that he lost his home to foreclosure in December 1997 and had filed a change of address form with the postal service. There is no record of OWCP receiving any change of address request prior to the

⁶ This section provides in pertinent part: “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.” 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.607.

⁸ *Id.* at § 10.607(a).

⁹ *Id.* at § 10.607(b).

¹⁰ *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

¹¹ *Id.*

¹² *Id.*

¹³ 20 C. F. R. § 10.127. A copy of the decision shall be mailed to the employee’s last known address.

issuance of the December 15, 1998 decision. Also, there is no evidence that the December 15, 1998 decision was returned to OWCP as undeliverable. Accordingly, it is presumed that appellant received OWCP's December 15, 1998 decision in the course of business.

Appellant's request for reconsideration was untimely by more than a year. Because his July 6, 2011 request was untimely, appellant must demonstrate "clear evidence of error" on the part of OWCP in denying his claim for job-related stress, anxiety and depression.¹⁴ OWCP denied appellant's claim because he had not established a compensable employment factor as the reputed cause of his diagnosed major depressive disorder. A part from his assertion that he had not received OWCP's December 15, 1998 decision, appellant did not submit any additional evidence or argument relevant to the issue upon which his claim had been denied. In particular, he did not submit additional evidence to substantiate any of the previously alleged employment incidents. He merely resubmitted documents regarding time and attendance issues.¹⁵ The Board finds that appellant has not demonstrated clear evidence of error. As such, there is no justification for further merit review. Accordingly, OWCP properly declined to reopen appellant's case under 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant's July 6, 2011 request for reconsideration was untimely, and he failed to demonstrate clear evidence of error. Therefore, he is not entitled to further merit review.

¹⁴ 20 C.F.R. § 10.607(b). To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by OWCP. *See Dean D. Beets*, 43 ECAB 1153 (1992). The evidence must be positive, precise and explicit and it must be apparent on its face that OWCP committed an error. *See Leona N. Travis*, 43 ECAB 227 (1991). It is not enough to merely show that the evidence could be construed to produce a contrary conclusion. *Id.* Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error. *See Jesus D. Sanchez*, 41 ECAB 964 (1990). The evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must be of sufficient probative value to *prima facie* shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision. *Thankamma Mathews*, 44 ECAB 765, 770 (1993).

¹⁵ Neither the medical evidence nor appellant's OPM disability retirement are relevant to the issue of whether he established a compensable employment factor.

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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