

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REGINA G. JACKSON and LIBRARY OF CONGRESS,
Washington, DC

*Docket No. 99-791; Submitted on the Record;
Issued April 25, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration, received by the Office on July 10, 1998, was untimely filed and did not present clear evidence of error.

The Board has duly reviewed the case record and concludes that appellant's request for reconsideration, received by the Office on July 10, 1998, was untimely filed and did not present clear evidence of error.

Section 8128(a) of the Federal Employees' Compensation Act¹ does not entitle a claimant to a review of an Office decision as a matter of right.² The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a).³ As one such limitation, the Office has stated that it will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.⁴ The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).⁵

¹ 5 U.S.C. § 8128(a).

² *Veletta C. Coleman*, 48 ECAB 367 (1997).

³ Thus, although it is a matter of discretion on the part of the Office whether to review an award for or against payment of compensation, the Office has stated that a claimant may obtain review of the merits of a claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office; *see* 20 C.F.R. § 10.138(b)(1).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *See Veletta C. Coleman*, *supra* note 2.

The Office properly determined in this case that appellant failed to file a timely application for review. In implementing the one-year time limitation, the Office's procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues.⁶ The Office issued its last merit decision in this case on December 6, 1993 wherein it terminated appellant's compensation benefits on the grounds that the evidence of record failed to establish that she had any disability after March 3, 1993 causally related to her accepted February 25, 1983 costochondritis. As appellant's reconsideration request received on July 10, 1998 was outside the one-year time limit which began the day after December 6, 1993, appellant's request for reconsideration was untimely.

In those cases where a request for reconsideration is not timely filed, the Board has held that the Office must nevertheless undertake a limited review of the case to determine whether there is clear evidence of error pursuant to the untimely request.⁷ Office procedures state that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.138(b)(2), if the claimant's application for review shows "clear evidence of error" on the part of the Office.⁸

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 be manifest on its face that the Office committed an error. 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 on the part of the Office. To show clear evidence of error, 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 the Office decision. The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of the Office such that the Office abused its discretion in denying merit review in the face of such evidence.⁹

In the present case, subsequent to the December 6, 1993 decision, appellant submitted copies of letters she sent to President and Mrs. Clinton and Senator Faircloth, dated August 3 and August 21, 1995, March 13, 1997 and February 5, 1998, in which she asked for assistance with her claim, as well as a newspaper article documenting her struggle for compensation benefits. In

⁶ *Veletta C. Coleman, supra note 2; Larry L. Lilton, 44 ECAB 243 (1992).*

⁷ *Veletta C. Coleman, supra note 2; Gregory Griffin, 41 ECAB 186 (1989); petition for recon. denied, 41 ECAB 458 (1990).*

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(d) (May 1996).

⁹ *Veletta C. Coleman, supra note 2.*

her July 9, 1998 letter requesting reconsideration, appellant stated only that she wished the Office to reconsider her claim as she believed she had been wrongfully denied benefits. Appellant did not submit any new medical evidence or submit a narrative statement containing arguments.

The Office's October 8, 1998 decision properly determined that appellant had not presented clear evidence of error, as appellant did not submit any evidence pertinent to the issue of whether she had any disability after March 3, 1993 causally related to her accepted February 25, 1983 costochondritis, and further did not submit any type of statement with her request for reconsideration which would show that the Office erred in its prior decisions. The issue in this case is a medical one and appellant did not submit any pertinent medical evidence which had not been previously considered by the Office in its December 6, 1993 decision.¹⁰

The decision of the Office of Workers' Compensation Programs dated October 8, 1998 is hereby affirmed.

Dated, Washington, D.C.
April 25, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

¹⁰ The Board notes that in her August 3, 1995 and March 13, 1997 letters to President Clinton, appellant stated that the anti-inflammatory medication she took as treatment for her accepted costochondritis had caused her to develop stomach and colon disorders. If appellant or her physician believe that she developed additional medical conditions as a consequence of her accepted costochondritis, she should file a Form CA-2, claim for occupational disease.