

**United States Department of Labor
Employees' Compensation Appeals Board**

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WILLIE S. BELTON, Sr., Appellant)	
)	Docket No. 06-224
and)	Issued: April 21, 2001
)	
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Washington, DC, Employer)	
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Appearances:
Willie S. Belton, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 10, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated August 10, 2005, which denied his reconsideration request on the grounds that it was untimely filed and failed to present clear evidence of error. Because more than one year has elapsed between the most recent merit decision dated March 11, 2004 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue on appeal is whether the Office properly determined that appellant's request for reconsideration received on March 14, 2005 was not timely filed and failed to present clear evidence of error.

FACTUAL HISTORY

On September 10, 2003 appellant, then a 47-year-old electrician, filed an occupational disease claim alleging that he developed an emotional condition as a result of harassment by

management. He became aware of his condition on August 27, 2003. Appellant stopped work on August 27, 2003 and did not return.

In a letter dated October 28, 2003, the Office advised appellant of the evidence needed to establish his claim and requested he submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

In letters dated October 27 and November 5, 2003, appellant made the following allegations: he was discriminated against when he was transferred to the biomedical section; he improperly received a directive from management on November 30, 2000, regarding wearing protective clothing; on March 25, 2003 Associate Chief Philip Obianwu placed him in a hostile work environment; on March 28, 2003 he improperly received a reprimand for entering the mycology section; on July 18, 2003 he was improperly placed on leave without pay by the Associate Director David J. West for the period August 4 to 17, 2003; and on August 27, 2003 Mike Slagle, his supervisor, was unresponsive to his concerns regarding the condensate system. Appellant submitted an Equal Employment Opportunity complaint dated March 26, 2003 alleging, harassment and a hostile work environment. Also submitted were several disciplinary actions including a letter of reprimand dated March 28, 2003, for improperly entering the mycology lab and a suspension dated July 18, 2003 and for loitering in an unauthorized area of the employing establishment. An attending physician's report dated August 28, 2003, prepared by Dr. Daniel J. O'Connell, a Board-certified psychiatrist, diagnosed depression, tension, agitation in the setting of work stress and noted with a checkmark "yes" that the condition was caused or aggravated by an employment activity. Also submitted was a report from Dr. Stefan A. Lund, a psychologist, dated September 26, 2003, who noted that appellant experienced significant stress in his workplace.

In a decision dated March 11, 2004, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by the factors of employment as required by the Act.¹

By an undated reconsideration request form and a letter dated March 11, 2005, appellant requested reconsideration and submitted additional evidence. The reconsideration request form was stamped as received on March 14, 2005 and the letter was stamped as received on March 22, 2005. The envelope containing the request was not retained in the record. Appellant asserted that his depression and stress were reactions induced and exacerbated by the conduct of his supervisor and the agency. He submitted additional reports from Dr. Lund, dated April 11 to September 26, 2003, which advised that appellant experienced significant stress from his work environment and was totally disabled. Also submitted were reports from Dr. O'Connell dated August 28, 2003 to January 25, 2005, who noted that appellant experienced continued harassment in the workplace and was totally disabled.

By decision dated August 10, 2005, the Office denied appellant's application for reconsideration on the grounds that the request was not timely and that appellant did not present clear evidence of error by the Office.

¹ 5 U.S.C. §§ 8101-8193.

LEGAL PRECEDENT

Section 8128(a) of the 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.”²

The Office’s imposition of a one-year time limitation within which to file an application for review as part of the requirements for obtaining a merit review does not constitute an abuse of discretionary authority granted the Office under section 8128(a).³ This section does not mandate that the Office review a final decision simply upon request by a claimant.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a). Thus, section 10.607(a) of the implementing regulation provides that an application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁴

Section 10.607(b) states that the Office will consider an untimely application for reconsideration only if it demonstrates clear evidence of error by the Office in its most recent merit decision. The reconsideration request must establish that the Office’s decision was, on its face, erroneous.⁵

ANALYSIS

The Office issued a decision on August 10, 2005, denying reconsideration of its prior March 11, 2004 decision on the grounds that appellant’s request for reconsideration date stamped as received March 14, 2005 was untimely filed. The Board finds that March 14, 2005 is the date the Office received the reconsideration request.

The one-year time limitation begins to run on the date following the date of the original Office decision.⁶ A right to reconsideration within one year accompanies any merit decision on the issues.⁷ The Board notes that, the Office’s procedure manual, Chapter 2.1602.3(b)(1),

² 5 U.S.C. § 8128(a).

³ *Diane Matchem*, 48 ECAB 532, 533 (1997); citing *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

⁴ 20 C.F.R. § 10.607(a).

⁵ 20 C.F.R. § 10.607(b).

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

⁷ *Id.*; *Larry J. Lilton*, 44 ECAB 243 (1992).

provides that timeliness for a reconsideration request is determined not by the date the Office receives the request, but by the postmark on the envelope. The procedure manual provides that timeliness is determined by the postmark on the envelope, if available. Otherwise, the date of the letter itself should be used.⁸

The Board notes that the envelope containing the reconsideration request was not retained in the record and the letter requesting reconsideration was dated March 11, 2005. For this reason the Board finds that the reconsideration request was timely. Appellant, timely filed his request for reconsideration within one year of the March 11, 2004 merit decision and the Office improperly denied his reconsideration request by applying the legal standard reserved for cases where reconsideration is requested after more than one year. Since the Office erroneously reviewed the evidence submitted in support of appellant's reconsideration request under the clear evidence of error standard, the Board will remand the case to the Office for review of this evidence under the proper standard of review for a timely reconsideration request.⁹

CONCLUSION

The Board finds that appellant's March 11, 2005 request for reconsideration was timely filed.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b)(1) (January 2004).

⁹ See *Donna M. Campbell*, 55 ECAB __ (Docket No. 03-2223, issued January 9, 2004).

ORDER

IT IS HEREBY ORDERED THAT the August 10, 2005 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded to the Office for further proceedings consistent with this opinion.

Issued: April 21, 2001
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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