United States Department of Labor
Employees' Compensation Appeals Board

A.B., Appellant	)	
and	)	**Docket No. 06-746**
	)	**Issued: September 7, 2006**
DEPARTMENT OF THE AIR FORCE, NORTON AIR FORCE BASE, CA, Employer	)	

Appearances:
A.B., 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 February 10, 2006 appellant filed a timely appeal from the January 30, 2006 nonmerit decision of the Office of Workers' Compensation Programs which denied his January 12, 2006 request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's denial of reconsideration. The Board has no jurisdiction to review the merits of appellant's case or the termination of his benefits in 1998.

ISSUE

The issue is whether the Office properly denied appellant's January 12, 2006 request for reconsideration on the grounds that it failed to establish clear evidence of error.

FACTUAL HISTORY

On the prior appeal of this case[1] the Board found that the Office did not meet its burden of proof to terminate appellant's compensation effective February 7, 1996. The Board found that an unresolved conflict in medical opinion existed between appellant's attending physician and an

[1] Docket No. 96-1544 (issued June 15, 1998).

Office referral physician. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.[2]

After referring appellant to an impartial medical specialist to resolve the conflict, the Office issued a decision on December 29, 1998 terminating his compensation benefits effective that date. The Office found that the weight of the medical evidence, as represented by the report of the impartial medical specialist, established that appellant no longer had medical residuals of his accepted employment injury.

In a decision dated February 17, 2000, an Office hearing representative affirmed findings that additional medical evidence was not sufficient either to shift the weight of the evidence or to warrant further development of the claim.

The Office later reviewed the merits of appellant's claim. In a decision dated May 2, 2001, it denied modification of its prior decision to terminate benefits. The Office found that the weight of the medical evidence continued to rest with the opinion of the impartial medical specialist and that the additional medical opinion evidence submitted was of diminished probative value and was, therefore, insufficient to overcome the weight of the evidence.

The Office once again reviewed the merits of appellant's claim. In a decision dated July 25, 2002, it denied modification of its 1998 decision to terminate benefits. The Office addressed appellant's arguments and found that an additional report by his attending physician was insufficient to overcome the opinion of the impartial medical specialist. In an attached statement of review rights, the Office notified appellant that any request for reconsideration must be made in writing within one year of the date of that decision.

In a letter dated January 12, 2006, appellant requested reconsideration. He took issue with the evaluation performed by the impartial medical specialist. Appellant mentioned all the other doctors he had seen and contended that he had proved his case "time after time." He noted his continuing pain, how it affected activities of daily living and that he was unable to find work. Appellant included a copy of a letter he wrote on September 10, 2002 requesting reconsideration. He stated that he wrote this letter for his congressman so that he could help, but that the congressman's aide had a stroke and the letter was not forwarded to the Office. Appellant acknowledged that the time limitation for requesting reconsideration had expired, but he provided the September 10, 2002 letter to show that he had tried to ask for reconsideration in a timely manner.

In a decision dated January 30, 2006, the Office denied further merit review of appellant's case. The Office found that his January 12, 2006 request for reconsideration was untimely and did not present clear evidence of error in the Office's July 25, 2002 merit decision.

[2] Appellant sustained injury on December 27, 1978 accepted for a low back strain and herniated disc at L4-5.

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."[3]

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.[4]

The term "clear evidence of error" is intended to represent a difficult standard.[5] 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.[6]

ANALYSIS

The most recent decision on the merits of appellant's case is the Office's July 25, 2002 decision denying modification of the 1998 termination decision. The Office properly notified him at that time that any request for reconsideration must be made in writing within one year of the date of that decision, meaning that appellant had until July 25, 2003 to request reconsideration. His January 12, 2006 request for reconsideration is, therefore, untimely.

Appellant submitted a copy of a September 10, 2002 request for reconsideration, but he explained that he did not mail it to the Office. Instead, he gave the letter to his congressman's office and, due to circumstances that arose, the letter was never forwarded to the Office. There is no provision in the law excusing the failure to meet the time limitation set forth in 20 C.F.R. § 10.607 (1999) due to these circumstances. Section 8128(a) of the Act provides that the Office may review an award for or against payment of compensation "at any time." But if a written

[3] 5 U.S.C. § 8128(a).

[4] 20 C.F.R. § 10.607 (1999).

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

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

request is not sent to the Office within one year of the Office's most recent merit decision, the request is subject to a higher standard of review.

The Board finds that appellant's untimely request for reconsideration does not present clear evidence of error in the Office's termination of benefits. In both his September 10, 2002 and January 12, 2006 letters, appellant merely reargues the merits of his case, expressing his disagreement with the Office's evaluation of the evidence and in particular the special evidentiary weight accorded the opinion of the impartial medical specialist. This argument does not warrant a reopening of appellant's case for a review on the merits. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.[7] Rather, the untimely request must manifest on its face that the Office's decision was erroneous. The Board finds that appellant's July 12, 2006 request for reconsideration does not meet this difficult standard.

CONCLUSION

The Board finds that the Office properly denied appellant's January 12, 2006 request for reconsideration. The request was untimely filed and failed to present clear evidence of error in the termination of his benefits.

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 7, 2006
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

[7] *Leona N. Travis*, 43 ECAB 227, 241 (1991).