United States Department of Labor
Employees' Compensation Appeals Board

I.R., Appellant	)	
and	)	**Docket No. 06-1490**
	)	**Issued: February 23, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Los Angeles, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 19, 2006 appellant filed a timely appeal from the March 16 and June 6, 2006 nonmerit decisions of the Office of Workers' Compensation Programs which denied his requests for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review these nonmerit decisions.

ISSUE

The issue is whether the Office properly denied appellant's requests for reconsideration on the grounds that they were untimely and failed to show clear evidence of error.

FACTUAL HISTORY

On December 27, 1974 appellant, a 28-year-old city carrier, sustained an injury in the performance of duty when someone rear-ended his postal vehicle. The Office accepted his claim for soft-tissue injuries to the right knee, contusion of the right leg, low back syndrome, torn right lateral meniscus and consequential left knee ligament laxity. Appellant received benefits,

including a March 23, 1979 schedule award for a 20 percent permanent impairment of his right leg.

Effective January 7, 1999 the Office terminated appellant's compensation under 5 U.S.C. § 8106(c)(2). The Office found that he refused suitable work as a modified carrier without justification. The attached statement of appeal rights informed appellant that any request for reconsideration must be made within one year of the date of that decision.

Appellant thereafter filed several claims for a schedule award, twice in 2001 and again in 2005. Each time the Office explained to him that the 1999 termination precluded the payment of any further monetary compensation, including compensation for an additional impairment.

On January 30, 2006 appellant requested reconsideration. He submitted a January 30, 2006 medical report from Dr. Robert D. Shlens, his orthopedic surgeon. Dr. Shelns stated that appellant needed a total knee replacement on the right. He added: "[Appellant] states [that] he was offered a job in Los Angeles in 1998. He was unable to take the job due to the advanced arthritis of his knees. [Appellant] was unable to drive, stand or sit for any length of time."

In a decision dated March 16, 2006, the Office denied reconsideration on the grounds that appellant's request was untimely and failed to present clear evidence of error in the January 7, 1999 decision terminating his monetary compensation.

On or about April 14, 2006, appellant again requested reconsideration. He submitted an April 6, 2006 report from Dr. Shlens who repeated that appellant was unable in 1998 to drive the distance from his home to the offered job.

Dr. Shlens attached two older reports. On July 23, 1998 he reviewed appellant's work restrictions and the physical requirements of the offered modified carrier position. He concluded: "This appears to be a satisfactory job consistent with the work restrictions in my correspondence of February 12, 1998." On December 28, 1998 Dr. Shlens reviewed the physical requirements of another job:

> "[Appellant] was offered a job and he shows me a letter from Douglas Norris, [s]enior [i]njury [c]ompensation [s]pecialist. The job offered to [him] includes working as a clerk distributing mail to post offices and to carrier routes which involves continuous standing, stretching and reaching and may require handling heavy sacks of mail weighing up to 70 pounds. The other part of the job is that of a carrier and special delivery messenger which requires collection of mail on foot or by vehicle under varying conditions and it may require driving motor vehicles and any kind of traffic and road conditions and delivering parcel post from trucks and making collections of mail from various boxes or other locations and carrying mail in shoulder satchels weighing as much as 35 pounds and loading and unloading sacks of mail weighing up to 70 pounds."

After commenting that the modified carrier position would be a satisfactory job consistent with appellant's work restrictions, Dr. Shlens stated: "This new job offered to [appellant] is unsatisfactory."

In a decision dated June 6, 2006, the Office denied reconsideration on the grounds that appellant's request was untimely and failed to present clear evidence of error in the January 7, 1999 decision.

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."[1]

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.[2]

The term "clear evidence of error" is intended to represent a difficult standard.[3] 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.[4]

ANALYSIS

When the Office issued its January 7, 1999 decision to terminate appellant's compensation, it notified him that he had one year from the date of that decision to request reconsideration of the matter. He had until January 7, 2000 to make a timely request. His two requests in 2006 are clearly untimely.

Because these requests are untimely, the Office will not review the merits of appellant's case without clear evidence of error in the January 7, 1999 decision terminating his monetary compensation for refusing suitable work. Dr. Shlens' January 30, 2006 report asserts that appellant was unable to take the job in 1998 due to advanced arthritis in his knees, but, if

[1] 5 U.S.C. § 8128(a).

[2] 20 C.F.R. § 10.607 (1999).

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

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

appellant was unable to drive, stand or sit for any length of time because of advanced arthritis, Dr. Shlens did not report this in 1998 when he cleared appellant to return to work in the offered position of modified carrier. As he reported on July 23, 1998 the position of modified carrier "appears to be a satisfactory job consistent with [appellant's] work restrictions." Dr. Shlens made no attempt to explain his subsequent change of mind. Because his current opinion appears inconsistent with the medical clearance he provided in 1998, the Board finds that Dr. Shlens' January 30, 2006 report carries little evidentiary weight and does not show clear evidence of error in the Office's January 7, 1999 decision. Dr. Shlens' April 6, 2006 report is repetitive and suffers from the same problem.

The Office terminated compensation because appellant refused the position of modified clerk the position Dr. Shlens approved on July 23, 1998. The Office did not terminate compensation based on the position he described on December 28, 1998. Dr. Shlens' December 28, 1998 opinion that this other job was unsatisfactory is immaterial to the termination of appellant's compensation. His December 28, 1998 report has no bearing on and fails to show clear evidence of error in the Office's January 7, 1999 decision.

CONCLUSION

The Board finds that the Office properly denied appellant's requests for reconsideration. Both requests were untimely and neither provided clear evidence of error in the Office's January 7, 1999 decision to terminate his compensation under 5 U.S.C. § 8106(c)(2).

ORDER

IT IS HEREBY ORDERED THAT the June 6 and March 16, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 23, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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