

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

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**G.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Nashville, TN, Employer**

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**Docket No. 07-766  
Issued: July 9, 2007**

*Appearances:*

*Edward T. Kindall, Esq., for the appellant  
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 January 25, 2007 appellant filed a timely appeal from nonmerit decisions of the Office of Workers' Compensation Programs dated September 12, October 23 and November 15, 2006 denying her requests for reconsideration on the grounds that they were untimely filed and did not establish clear evidence of error. Because more than one year has elapsed between the most recent merit decision dated November 3, 2003 and the filing of this appeal on January 25, 2007, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

The issue is whether the Office properly denied appellant's requests for reconsideration as untimely filed and lacking clear evidence of error.

**FACTUAL HISTORY**

This is the second appeal in this case to the Board. By decision dated July 17, 2006, the Board affirmed the Office's January 6, 2006 decision denying appellant's request for merit

review. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.<sup>1</sup> Facts pertinent to this appeal are provided below.

On July 11, 2002 appellant, then a 52-year-old letter carrier, filed an occupational disease claim, alleging that she sustained an emotional condition due to factors of her federal employment. She claimed that she was harassed, threatened, coerced, belittled, humiliated and deceived by her supervisors. Appellant alleged that she was reassigned to positions and shifts which she found objectionable and was sent for numerous "fitness[-]for[-]duty examinations." She further alleged that her supervisors had her followed and told her they had the power to move her anywhere at any time. By decision dated October 17, 2002, the Office denied appellant's claim, finding that she had failed to allege a compensable factor of employment and had not established that she was injured in the performance of duty.

At the July 8, 2003 oral hearing, appellant testified that she suffered from post-traumatic stress disorder and depressive disorder because the employing establishment failed to place her and treat her as a "rehab[ilitation]" employee following her prior accepted claim for carpal tunnel syndrome. She reiterated her allegations of coercion and harassment by her supervisors and indicated that she had filed an Equal Employment Opportunity (EEO) complaint.

By decision dated November 3, 2003, an Office hearing representative affirmed the Office's October 17, 2002 decision, finding that appellant had identified no compensable employment factors. The hearing representative found further that appellant's reactions of stress were self-generated; that the employing establishment had not erred or acted abusively regarding administrative or personnel matters; and that appellant had not submitted any corroborating evidence substantiating her allegations.

On November 1, 2004 appellant's representative requested reconsideration. By decision dated January 6, 2006, the Office denied her request for reconsideration on the grounds that she had not provided any new or relevant evidence supporting her claim.

Appellant sought review by the Board. By decision dated July 17, 2006, the Board affirmed the Office's denial of appellant's request for reconsideration, finding that she had not met any of the requirements of 5 U.S.C. § 8128(a).

On August 8, 2006 appellant requested reconsideration of the November 3, 2003 decision. She asserted that her emotional condition had precluded her from understanding legal matters and that she did not fully comprehend what was required to establish her case. In a "[l]etter in support of Petition for Reconsideration" dated "July 2006," appellant reiterated that her emotional condition was due to factors of employment and provided a chronology of events alleged to have caused her condition.

Appellant submitted numerous documents in support of her request, including: offers and acceptances of limited-duty jobs; notifications of personnel action dated March 24, 1999 and November 24, 2000; a September 22, 1999 letter to appellant from the employing establishment, scheduling her for a fitness-for-duty examination; affidavit questions to Linda Flippo pursuant to

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<sup>1</sup> Docket No. 06-1013 (issued July 17, 2006).

appellant's EEO case; undated work restrictions, bearing an illegible signature; an undated document entitled "Union's Contentions and Disputes;" undated "Step A Discussion notes" and an April 25, 1997 memorandum to the employing establishment from Kathy Matyas, R.N., regarding appellant's work restrictions.

By decision dated September 12, 2006, the Office denied appellant's request for reconsideration as untimely and failing to present clear evidence of error. The Office determined that the documents had previously been considered.

The record contains a copy of a September 14, 2006 letter to Congressman Jim Cooper, in which appellant alleged that the employing establishment's harassment and discrimination was responsible for her post-traumatic stress disorder. She claimed that the overwhelming medical evidence submitted was not considered by the Office. The record also contains an undated "Letter for Reconsideration," received by facsimile from Congressman Cooper's office on October 12, 2006 at 9:32 a.m. It repeated the allegations made in appellant's August 8, 2006 request for reconsideration.

By decision dated October 23, 2006, the Office denied appellant's request for reconsideration on the grounds that it was untimely and failed to show clear evidence of error.

The record contains a copy of an undated "Letter for Reconsideration," received by facsimile from Congressman Cooper's office on October 31, 2006. It is a duplicate of the undated "Letter for Reconsideration," received by facsimile from Congressman Cooper's office on October 12, 2006 at 9:32 a.m. The record also contains a copy of the previously submitted September 14, 2006 letter to Congressman Cooper. Appellant submitted a July 10, 2003 witness statement from Florinda B. Lucas, a coworker, prepared in connection with her EEO case. Ms. Lucas described what she perceived to be stress experienced by appellant as a result of alleged actions of the employing establishment.

By decision dated November 15, 2006, the Office denied appellant's request for reconsideration, finding that it was untimely and failed to show clear evidence of error.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act<sup>2</sup> provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."<sup>3</sup>

20 C.F.R. § 10.607(b) provides that the Office will consider an untimely application only if it demonstrates clear evidence of error by the Office in its most recent merit decision. To establish clear evidence of error, a claimant must submit evidence relevant to the issue which

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> 20 C.F.R. § 10.605.

was decided by the Office. The evidence must be positive, precise and explicit and must 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.<sup>4</sup> 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's 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.<sup>5</sup>

### ANALYSIS

In July 2002, appellant filed an occupational disease claim alleging that she sustained an emotional condition due to various incidents and conditions at work. In two merit decisions, the Office denied her claim on the grounds that she did not establish any compensable employment factors. In a January 6, 2006 decision, the Office denied appellant's request for reconsideration, finding that she had not raised a substantive legal issue and had not presented new or relevant evidence. On July 17, 2006 the Board affirmed the January 6, 2006 decision. In decisions dated September 12, October 23 and November 15, 2006, the Office denied appellant's requests for further review of the merits of her claim, on the grounds that her requests were untimely filed and failed to demonstrate clear evidence of error.

In its September 12, October 23 and November 15, 2006 decisions, the Office properly determined that appellant filed untimely requests for reconsideration. Appellant's reconsideration requests were filed on August 8, October 12 and 31, 2006, respectively. As all of the reconsideration requests were filed more than one year after the Office's most recent merit decision of November 3, 2003, appellant must demonstrate clear evidence of error on the part of the Office.

Appellant has not demonstrated clear evidence of error on the part of the Office in issuing its September 12, October 23 and November 15, 2006 decisions. She did not submit the type of positive, precise and explicit evidence or argument which manifests on its face that the Office committed an error.

In support of her August 8, 2006 request, appellant asserted that her emotional condition precluded her from understanding legal matters and that she did not fully comprehend what was required to establish her case. This contention is not relevant to the issue that was before the

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<sup>4</sup> See *Alberta Dukes*, 56 ECAB \_\_\_\_ (Docket No. 04-2028, issued January 11, 2005); see also *Leon J. Modrowski*, 55 ECAB 196 (2004).

<sup>5</sup> See *Alberta Dukes*, *supra* note 4.

Office, namely, whether appellant had established a compensable factor of employment and is, therefore, insufficient to establish clear evidence of error.<sup>6</sup> Appellant reiterated that her emotional condition was due to factors of employment and provided a chronology of events alleged to have caused her condition. The information provided is merely a restatement of allegations previously made and considered by the Office in its November 3, 2003 decision and thus does not meet the standard for establishing clear evidence of error. Appellant submitted duplicates of numerous documents of record, including: offers and acceptances of limited-duty jobs; notifications of personnel action; a September 19, 2002 memorandum from Paul Robinson to Patricia Johnson; a September 22, 2002 employing establishment response to appellant's allegations; a September 27, 1999 fax cover sheet containing comments from appellant; and a December 14, 1998 job analysis report. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>7</sup> Appellant also submitted a September 22, 1999 letter from the employing establishment, scheduling her for a fitness-for-duty examination; affidavit questions to Ms. Flippo pursuant to appellant's EEO case; undated work restrictions, bearing an illegible signature; an undated document entitled "Union's Contentions and Disputes;" undated "Step A Discussion notes" and an April 25, 1997 memorandum to the employing establishment from Ms. Matyas, R.N., regarding appellant's work restrictions. This evidence does not demonstrate error on the part of the Office. For these reasons, appellant has not raised a substantial question concerning the correctness of the Office's November 3, 2003 decision and the Office properly determined that she failed to establish clear evidence of error in that decision.

In her October 12, 2006 request, appellant claimed that the overwhelming medical evidence submitted had not been considered by the Office. In this case, the issue for determination is whether appellant has established a compensable factor of employment. Therefore, appellant's contention is irrelevant. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup> Appellant submitted a copy of a September 14, 2006 letter to Congressman Cooper alleging that the employing establishment's harassment and discrimination was responsible for her post-traumatic stress disorder. She also submitted an undated "Letter for Reconsideration," repeating the allegations made in her August 8, 2006 request for reconsideration. As these documents are repetitious of evidence previously submitted and reviewed by the Office, they have no evidentiary value and do not establish clear evidence of error.

Appellant's October 31, 2006 request for reconsideration was a duplicate of the undated "Letter for Reconsideration," received by the Office on October 12, 2006. She also submitted a copy of her September 14, 2006 letter to Congressman Cooper. This duplicative evidence is insufficient to show error on the part of the Office.<sup>9</sup> Appellant submitted a July 10, 2003 witness

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<sup>6</sup> See *Alberta Dukes*, *supra* note 4.

<sup>7</sup> *Edward W. Malaniak*, 51 ECAB 279 (2000); *Eugene F. Butler*, 36 ECAB 393 (1984).

<sup>8</sup> See *Arlesa Gibbs*, 53 ECAB 204 (2001).

<sup>9</sup> See *supra* note 7.

statement from Ms. Lucas, a coworker, prepared in connection with her EEO case. Ms. Lucas described what she perceived to be stress experienced by appellant as a result of alleged actions of the employing establishment. Again, while Ms. Lucas' statement might be relevant to appellant's original emotional condition claim, it is not 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's decision.

The Board finds that evidence submitted by appellant in support of her requests for reconsideration, dated August 8, October 12 and 31, 2006, did not manifest on its face that the Office committed an error and failed to raise a substantial question concerning the correctness of the Office's decision. Therefore, it was insufficient to establish clear evidence of error in each case.<sup>10</sup>

### **CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's claims for reconsideration of the merits on the grounds that they were untimely filed and failed to show clear evidence of error.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated November 15, October 23 and September 12, 2006 are affirmed.

Issued: July 9, 2007  
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

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<sup>10</sup> See *supra* note 4.