

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

A.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pearl River, LA, Employer**

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**Docket No. 08-1704
Issued: July 10, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 2, 2008 appellant filed a timely appeal from a March 28, 2008 nonmerit decision of the Office of Workers' Compensation Programs denying her request for reconsideration as it was not timely filed and failed to present clear evidence of error. There is no merit decision within one year of the filing of this appeal. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case. The Board has jurisdiction over the March 28, 2008 nonmerit decision.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration as it was not timely filed and did not demonstrate clear evidence of error.

FACTUAL HISTORY

This is the second appeal before the Board in this case. By decision and order issued March 10, 2006,¹ the Board affirmed the Office's September 14, 2005 decision denying

¹ Docket No. 06-427 (issued March 10, 2006).

appellant's request for reconsideration as it was untimely filed and failed to present clear evidence of error. The law and the facts of the case as set forth in the prior decision and order are incorporated by reference.

In a September 20, 2006 letter, appellant requested reconsideration of April 10 and June 16, 2006 decisions. She submitted October 2 and 17, 2006 letters alleging the Office erred in processing her claims. Appellant also submitted a July 17, 2006 social security determination and copies of medical evidence previously considered on the merits. By decision dated October 18, 2006, the Office denied reconsideration as she did not provide a valid decision date or specify her reasons for disagreement.

Appellant requested reconsideration on October 23, 2006, alleging that the Office did not place medical evidence in the appropriate claim file. It denied reconsideration by January 8, 2007 decision, finding that she failed to demonstrate clear evidence of error.

In a February 3, 2008 letter, appellant requested reconsideration. She reiterated prior allegations that the Office erred in developing her case and did not fully consider the evidence. Appellant submitted several statements asserting that her claims were timely filed² and reiterating her account of January 1989 and April 2001 incidents. She also submitted copies of March 2003 Office letters describing the development of her claims.

In a January 10, 2008 report, Dr. Beverly Stubblefield, an attending clinical psychologist, related that appellant felt threatened at work on April 20, 2001 when speaking with an injury compensation specialist.

By decision dated June 5, 2008, the Office denied reconsideration on the grounds that the request was untimely filed and failed to present clear evidence of error in its February 25, 2002 decision, the most recent merit decision in the case. It found that appellant's letters were irrelevant to the claim and that Dr. Stubblefield's report duplicated prior evidence.

LEGAL PRECEDENT

The Office, through regulation, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of the Federal Employees' Compensation Act.³ It will not review a decision denying or terminating a benefit unless the application for review is

² On August 2, 2007 appellant filed a duplicate claim for an emotional condition sustained on April 26, 2001 when an injury compensation specialist discussed a job offer with her. On December 15, 2007 she filed a duplicate claim for an emotional condition sustained on May 8, 2001, when she felt threatened at work. On January 25, 2008 the Office deleted File No. xxxxxx301 as a duplicate of File Nos. xxxxxx991 and xxxxxx188.

³ 5 U.S.C. §§ 8101-8193.

filed within one year of the date of that decision.⁴ When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.⁵ 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. § 10.607, if the claimant's application for review shows "clear evidence of error" on the part of the Office.⁶ In this regard, the Office will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.⁷

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 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.⁸ 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. The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of the Office such that it improperly denied merit review in the face of such evidence.⁹

ANALYSIS

The Office properly determined that appellant failed to file a timely application for review. Its procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision.¹⁰ A right to reconsideration within one year also accompanies any subsequent merit decision.¹¹ Appellant's February 3, 2008 request for reconsideration was submitted more than one year after the February 5, 2002 decision, the last merit decision of record. It was therefore untimely. Consequently, appellant must demonstrate clear evidence of error by the Office in denying her claim for compensation.¹²

⁴ 20 C.F.R. § 10.607; *see also Alan G. Williams*, 52 ECAB 180 (2000).

⁵ *Veletta C. Coleman*, 48 ECAB 367 (1997).

⁶ *See Gladys Mercado*, 52 ECAB 255 (2001). Section 10.607(b) provides: "[The Office] will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of [it] in its most recent decision. The application must establish, on its face, that such decision was erroneous." 20 C.F.R. § 10.607(b).

⁷ *See Nelson T. Thompson*, 43 ECAB 919 (1992).

⁸ *Leon J. Modrowski*, 55 ECAB 196 (2004); *Darletha Coleman*, 55 ECAB 143 (2003).

⁹ *Pete F. Dorso*, 52 ECAB 424 (2001); *John Crawford*, 52 ECAB 395 (2001).

¹⁰ 20 C.F.R. § 10.607(a).

¹¹ *Robert F. Stone*, 57 ECAB 292 (2005).

¹² 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

The Office, in its February 5, 2002 decision, denied appellant's emotional condition claim as she failed to establish a compensable factor of employment. Appellant attributed her emotional condition to an April 26, 2001 conversation with an injury compensation specialist regarding a light-duty job offer. The Office found that the conversation was an administrative matter not within the performance of duty and that she failed to establish administrative error or abuse. In appellant's February 3, 2008 request for reconsideration, she did not address the relevant issue of whether she established a compensable factor of employment. Thus, she has not established clear evidence of error.¹³

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration as it was not timely filed and did not demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 28, 2008 is affirmed.

Issued: July 10, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹³ *Howard Y. Miyashiro*, 51 ECAB 253 (1999) (in order to establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office).