United States Department of Labor
Employees' Compensation Appeals Board

H.T., Appellant	)	
and	)	**Docket No. 07-1665**
	)	**Issued: November 19, 2007**
DEPARTMENT OF THE ARMY, McALESTER ARMY AMMUNITION PLANT, McAlester, OK, Employer	)	

Appearances:
Appellant, 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 June 5, 2007 appellant filed a timely appeal from the March 5, 2007 nonmerit decision of the Office of Workers' Compensation Programs which denied his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction to review the merits of appellant's case.

ISSUE

The issue is whether the Office properly denied appellant's September 13, 2005 request for reconsideration.

FACTUAL HISTORY

On September 13, 1993 appellant, then a 53-year-old materials handler, sustained an injury in the performance of duty: "I had picked a box of saw blades from the United Postal Service shelf to put on a buggy. I turned around and took about two steps and hung my foot on a

pallet and fell on my right knee." Appellant received continuation of pay. The Office accepted appellant's claim for a right knee contusion.

In a decision dated January 6, 1994, the Office found that appellant had no disability for work causally related to his accepted injury. It found that the weight of the medical evidence showed no objective evidence that the right knee contusion was currently active or disabling. Further, the weight of the medical evidence established that appellant presented with disability secondary to an underlying and preexisting knee condition, which had been symptomatic since January 1988 and there was no medical basis to conclude that the September 13, 1993 injury materially worsened this condition. In an attached statement of appeal rights, the Office notified appellant that any request for reconsideration must be made within one year of the date of the decision.

On a prior appeal of this case,[1] the Board found that the Office properly denied appellant's June 1, 1995 request for reconsideration, as it was untimely and failed to show clear evidence of error in the Office's January 6, 1994 decision.

On September 13, 2005 the Office received an undated letter from appellant requesting reconsideration. Appellant alleged that the employing establishment had written letters to the Office falsely stating that he hurt himself on purpose. He alleged that the employing establishment wrote these letters for the sole purpose of having his claim denied. Further, appellant alleged that the letters were fraudulent and illegal because the employing establishment did not send him copies. He stated that he thought the second opinion physician read these letters and based his opinion more on the letters than on the injury itself. On May 22, 2006 appellant stated that this information was critical to his case because the Office made its decision in error. He did not place blame on the Office "because I don't think they knew about what was going on at the time, as I didn't either."

In a decision dated March 5, 2007, the Office denied appellant's September 13, 2005 request for reconsideration on the grounds that the request was untimely and failed to show clear evidence of error in the Office's January 6, 1994 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

[1] Docket No. 96-1448 (issued March 16, 1998).

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, 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.[3]

ANALYSIS

As the Board noted in 1998, the most recent merit decision in this case is the Office's January 6, 1994 decision finding that appellant had no disability for work causally related to his September 13, 1993 contusion injury. Appellant had one year or until January 6, 1995 to make a timely request for reconsideration. His September 13, 2005 request is, therefore, untimely.

Appellant's untimely request does not show, on its face, that the Office's January 6, 1994 decision was erroneous. He offered nothing but allegations. Appellant provided no proof that letters charging him with intentional or self-inflicted injury led to the denial of his claim. The January 6, 1994 decision rests on the medical evidence. The Office considered the medical opinions obtained, weighed their probative or evidentiary value and determined that the weight of the medical evidence showed no disability for work causally related to the September 13, 1993 contusion injury. So it is not obvious from the decision itself that the alleged letters had any effect on the outcome of his case. Appellant's statement that he thought the second opinion physician read these letters is not established as factual.

The clear evidence of error standard is intended to represent a difficult standard. The Office will not reopen appellant's case without clear proof that the January 6, 1994 decision was in error, proof so strong that the error is apparent on its face. Because appellant's September 13, 2005 request for reconsideration is untimely and fails to show clear evidence of error, the Board will affirm the Office decision denying that request.

CONCLUSION

The Board finds that the Office properly denied appellant's September 13, 2005 request for reconsideration.

[2] 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.607 (1999).

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 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