

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT M. CHAPMAN and DEPARTMENT OF THE AIR FORCE,
SACRAMENTO AIR LOGISTICS CENTER, McCLELLAN AIR FORCE BASE, CA

*Docket No. 00-2405; Submitted on the Record;
Issued February 21, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly found that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly determined that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

The Board's jurisdiction to consider and decide appeals from a final decision of the Office extends only to those final decisions issued within one-year prior to the filing of the appeal.^[1] As appellant filed the appeal with the Board on July 17, 2000, the only decision before the Board is the Office's April 12, 2000 decision, denying appellant's request for reconsideration.

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).^[2] The Office will not review a decision denying or terminating benefits unless the application for review is filed within one year of the date of that decision.^[3] The Office will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error by the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.^[4]

This case is on appeal to the Board for the third time.^[5] On the first appeal the Board found that the medical evidence appellant submitted to support his claim that he sustained

paroxysmal atrial tachycardia from stress at work was uncontroverted and was sufficiently probative to require further development by the Office. The Board set aside the Office's May 4, 1988 decision and remanded the case to the Office for further development and the issuance of a *de novo* decision. On remand the Office accepted appellant's claim for temporary aggravation of anxiety, palpitation, supra ventricular ectopic beats and temporary adjustment disorder from August 1981 through January 1988. On the second appeal the Board affirmed the Office's September 9, 1991 decision that appellant was not entitled to a schedule award for a psychiatric or cardiovascular condition.

By decision dated May 3, 1994, the Office denied appellant's disability claim, stating that the claimant's work-related medical problems were temporarily exacerbated by the accepted factors of his employment and that the aggravation or exacerbation ceased when appellant voluntarily retired from the employing establishment on December 7, 1987. Appellant requested a hearing which was held on March 2, 1995. By decision dated May 26, 1995, the Office hearing representative affirmed the Office's May 3, 1994 decision. On June 3, 1996 appellant requested reconsideration of the Office's decision and submitted the medical report of his treating physician, Dr. Janak K. Mehtani, a Board-certified psychiatrist and neurologist, dated April 12, 1996. On July 31, 1996 the Office denied appellant's request for modification. By letter dated July 31, 1997, appellant requested reconsideration of the Office's decision and submitted a medical report from Dr. Mehtani dated July 30, 1997.

By decision dated May 14, 1998, the Office denied appellant's request for modification.

By letter dated July 20, 1998, appellant appealed the Office's decision to the Board but subsequently withdrew the appeal. In an order dated May 28, 1999, the Board dismissed appellant's appeal.

By letter dated February 17, 2000, appellant requested reconsideration of the Office's decision and submitted Dr. Mehtani's medical reports dated April 12, 1996 and July 30, 1997.

By decision dated March 27, 2000, the Office denied appellant's request for reconsideration.

By decision dated April 12, 2000, the Office noted that the March 27, 2000 decision had erroneously failed to consider Dr. Mehtani's 1996 and 1997 reports as it received them just prior to issuing the decision, and stated that appellant's request was not timely filed and failed to present clear evidence of error.

Appellant's request for reconsideration dated February 17, 2000 was filed more than a year after the Office's May 14, 1998 decision, and therefore is untimely. The evidence appellant submitted to support his request were Dr. Mehtani's April 12, 1996 and July 30, 1997 report which appellant had previously submitted and were addressed by the Office. In his April 12, 1996 report, Dr. Mehtani stated that when appellant retired from the employing establishment on December 3, 1997, he obtained another job as a custodian and janitor in the San Juan Unified School District. He stated that, when appellant retired from that job, he suffered a "full-blown relapse" of his emotional condition, attributable, in part, to the employing establishment's denying him disability retirement when he retired in 1987. In his July 30, 1997 report, Dr. Mehtani stated that appellant's psychiatric and physical condition was caused and aggravated

by cumulative stress he was exposed to while working at the employing establishment. He reiterated that appellant “suffered from a full-blown relapse of his previous work-related injury to his psyche.” Dr. Mehtani explained that, when appellant retired from the school district job, he had “a complete relapse of his psychiatric disorder, with full-blown anxiety panic attacks, palpitation, ventricular ectopic beats, severe depression, insomnia, morbid thinking and suicidal ideation.” He stated that there was no difference between those symptoms and those appellant experienced at the employing establishment. Dr. Mehtani stated:

“[Appellant’s] psychiatric symptomatology was merely a continuation of his previously accepted psychiatric injury, according to the [s]tatement of [a]ccepted [f]acts. Had he sought adequate medical/legal advice at that time before he took the other assignment at the school district, he would have been eligible to receive medical disability retirement. He was under the impression that he could work at the school district for an additional five years and that could be added to his previous work done at [the employing establishment] for 25 years, making him eligible for full retirement benefits. That apparently was not the case, which he found out later, to his utter disappointment and chagrin.”

He stated that appellant did not have any preexisting psychiatric condition or premorbid personality which might have contributed to his psychiatric condition.

Dr. Mehtani’s medical reports do not establish that appellant’s emotional condition is work related as Dr. Mehtani attributed appellant’s relapse of his condition to appellant’s disappointment in not receiving full retirement benefits from the employing establishment when he retired from the school district and related issues concerning his regret in leaving the employing establishment in 1987 and in not obtaining medical disability at that time. These are not compensable factors of employment.^[6] Further, in his report dated December 15, 1992, Dr. Mehtani stated that appellant had been working in the San Juan Unified School District since January 1988 and that he was “quite stable psychiatrically” and had no diagnosable psychiatric disorder. Dr. Mehtani’s 1997 and 1996 reports show that appellant’s emotional condition ceased when he retired on December 3, 1987 from the employment establishment and was aggravated when he retired from the San Juan School District and learned that he was unable to obtain retirement benefits from the employing establishment. These reports do not show that appellant’s emotional condition was work related or that the Office committed clear evidence of error. The Office therefore acted within its discretion in denying a merit review of the claim.

The April 12, 2000 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 21, 2002

Alec J. Koromilas

Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[1] *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[2] 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.607(a); *see also Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

[4] 20 C.F.R. § 10.607(b); *see Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

[5] Docket No. 88-1491 (issued October 26, 1988); Docket No. 92-106 (issued June 26, 1992) (the facts and history surrounding the prior appeals are set forth in the initial two decisions and are hereby incorporated by reference).

[6] *See Peggy R. Lee*, 46 ECAB 527, 534 (1995); *Martha L. Watson*, 46 ECAB 407, 418 (1995).