

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

ROSEMARY BELL, Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL AIR
STATION, Pensacola, FL, Employer**

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**Docket No. 06-507
Issued: April 20, 2006**

Appearances:
RoseMary Bell, 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 December 28, 2005 appellant filed a timely appeal from the November 18, 2005 nonmerit decision of the Office of Workers' Compensation Programs, which denied her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this nonmerit decision.

ISSUE

The issue is whether the Office properly denied appellant's February 22, 2005 request for reconsideration.

FACTUAL HISTORY

On the prior appeal of this case,¹ the Board found that the Office had not undertaken a limited review of how the evidence submitted with appellant's untimely request for reconsideration bore on the evidence previously of record. The Board set aside the Office's

¹ Docket No. 05-1421 (issued October 3, 2005).

May 19, 2005 decision and remanded the case for a proper decision on appellant's request. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference. Briefly, the Office issued a schedule award on February 2, 2004 awarding 51.84 weeks of compensation from October 30, 2003 to October 26, 2004, for an 18 percent permanent impairment to appellant's left leg. Appellant requested reconsideration on February 22, 2005 and argued for additional compensation.

In a decision dated November 18, 2005, the Office denied appellant's request for reconsideration. The Office found that the request was untimely and did not present clear evidence of error in the February 2, 2004 schedule award. The Office explained that none of the evidence appellant submitted showed that she had a greater impairment than she was awarded. The Office further explained that appellant's claim remained open for treatment of the effects of her November 7, 2001 employment injury.

On appeal, appellant argues that her permanent impairment has not ceased or lessened and "my injury leaving a permanent scar, disfigurement, your decision does not warrant termination of compensation." She added: "As the injured worker, the time will never come when my [A]chilles will again be normal. 51.84 weeks of compensation was not within the perimeter of any healing."

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."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

The term "clear evidence of error" is intended to represent a difficult standard.⁴ If clear evidence of error has not been presented, the Office should deny the application by letter

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.607 (1999).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3.c (January 2004).

decision, which includes a brief evaluation of the evidence submitted and a finding made that clear evidence of error has not been shown.⁵

ANALYSIS

The appeal rights attached to the Office's February 2, 2004 schedule award advised appellant that any request for reconsideration must be made within one calendar year of the date of the decision. Appellant's February 22, 2005 request for reconsideration falls outside this one-year period and is therefore untimely. To obtain a merit review of the February 2, 2004 schedule award, her untimely request must demonstrate clear evidence of error on the part of the Office in issuing that decision.

The Board finds that appellant's February 22, 2005 request for reconsideration does not demonstrate clear evidence of error. Section 8107 of the Act authorizes a maximum of 288 weeks of compensation for the complete loss of leg, as with amputation at the hip.⁶ Partial losses are compensated proportionately.⁷ An 18 percent impairment therefore entitles appellant to 18 percent of 288 weeks or 51.84 weeks of compensation, which is what the Office awarded. Absent clear evidence that the Office made a mistake in finding 18 percent impairment, appellant may receive no additional weeks of compensation for her left leg. This is so even though the impairment is considered permanent and is expected to continue for the rest of her life. The terms of the Act are specific as to the method and amount of payment of compensation. Neither the Office nor the Board has the authority to enlarge the terms of the Act or to make an award of benefits and under any terms other than those specified by Congress in the statute.⁸

Nothing in appellant's February 22, 2005 request for reconsideration establishes on its face that she had more than an 18 percent permanent impairment of her left leg. At best, her argument and evidence indicate that she requires continuing medical attention, which is an entirely different matter than was decided by the February 2, 2004 schedule award. The schedule award compensated her for her permanent physical impairment and did nothing to terminate or limit or otherwise restrict her right to receive continuing medical benefits for residuals of her accepted employment injury or monetary compensation for any wage loss beyond the October 26, 2004 expiration date of the award. As the Office explained in its November 18, 2005 decision, appellant's claim remains open for treatment of the effects of her work-related injury.

Because appellant's February 22, 2005 request for reconsideration is untimely and fails to demonstrate clear evidence of error on the part of the Office in its February 2, 2004 schedule award decision, the Board will affirm the denial of that request.

⁵ *Id.* at Chapter 2.1602.3.d(1).

⁶ 5 U.S.C. § 8107(c)(2).

⁷ *Id.* at § 8107(c)(19).

⁸ *See Paul Hanley*, 53 ECAB 424 (2002).

CONCLUSION

The Board finds that the Office properly denied appellant's February 22, 2005 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2006
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