

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. WOODS and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 00-1988; Submitted on the Record;
Issued September 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's November 29, 1999 request for reconsideration under 5 U.S.C. § 8128(a) on the grounds that the request was not timely filed and failed to present clear evidence of error.

This case is on appeal before the Board for the third time. By decision dated December 24, 1999, the Board affirmed the Office's October 28, 1996 decision denying appellant's July 1, 1996 request for reconsideration on the grounds that the request was not timely filed and failed to present clear evidence of error.¹

On November 29, 1999 appellant filed another request for reconsideration. In a decision dated February 4, 2000, the Office denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a) on the grounds that her application for review was not timely filed and failed to present clear evidence of error.

The Board finds that the Office properly denied appellant's November 29, 1999 request for reconsideration.

Appellant initially sustained a work-related injury on April 14, 1977, which the Office accepted for lumbosacral sprain. The Office later determined that, as of February 23, 1982, appellant no longer had a work-related disabling back condition. Appellant filed a claim for a recurrence of disability on September 21, 1982, which the Office denied. Appellant sustained a second traumatic injury to her back on June 23, 1983, which the Office accepted for traumatic myalgia. Additionally, appellant filed three claims alleging recurrences of disability on August 1, August 23 and December 3, 1983, causally related to her June 23, 1983 accepted injury. The Office denied the claimed recurrences. Appellant has filed numerous requests for reconsideration as well as appeals to the Board with regard to both claims. The Office most

¹ Docket No. 97-1119. The Board's May 24, 1999 decision is incorporated herein by reference.

recently reviewed the merits of both the April 14, 1977 and June 23, 1983 claims in a decision issued June 29, 1989.

Section 8128(a) of the Federal Employees' Compensation Act² does not entitle a claimant to a review of an Office decision as a matter of right.³ This section vests the Office with discretionary authority to determine whether it will review an award for or against payment of compensation.⁴ The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁵ One such limitation is that the application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁶ Appellant failed to meet this particular requirement in that the Office's most recent merit decision was issued on June 29, 1989 and appellant filed her current request for reconsideration more than a decade later on November 29, 1999.

In those instances when a request for reconsideration is not timely filed, the Office will undertake a limited review to determine whether the application presents "clear evidence of error" on the part of the Office.⁷ 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.⁸

To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by the Office.⁹ The evidence must be positive, precise and explicit, and it must be apparent on its face that the Office committed an error.¹⁰ Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.¹¹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹² 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

² 5 U.S.C. § 8128(a).

³ *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁴ Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.607 (1999).

⁶ 20 C.F.R. § 10.607(a) (1999).

⁷ 20 C.F.R. § 10.607(b) (1999).

⁸ *See Nelson T. Thompson*, 43 ECAB 919 (1992).

⁹ *See Dean D. Beets*, 43 ECAB 1153 (1992).

¹⁰ *See Leona N. Travis*, 43 ECAB 227 (1991).

¹¹ *See Jesus D. Sanchez*, 41 ECAB 964 (1990).

¹² *See Leona N. Travis*, *supra* note 10.

favor of the claimant and raise a substantial question as to the correctness of the Office decision.¹³

In the instant case, appellant failed to demonstrate clear evidence of error. The only arguably relevant evidence submitted on reconsideration consists of treatment records dated November 18, 1996 from the Montefiore Medical Center. While this document noted complaints of back pain and referenced a history of back injury dating to 1977, the document does not bear a physician's signature. Furthermore, the report does not include a current diagnosis nor does it address the cause of appellant's condition. Consequently, this evidence is of limited probative value and clearly insufficient to *prima facie* shift the weight of the evidence in favor of appellant. Accordingly, the Office properly declined to reopen appellant's case for merit review under section 8128(a) of the Act.

The February 4, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 17, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

¹³ *Thankamma Mathews*, 44 ECAB 765, 770 (1993).