

resulting in carpal tunnel syndrome. Appellant first realized that her condition was caused or aggravated by her employment on April 18, 1997.

On June 30 and August 1, 1997 the Office requested additional factual and medical evidence. On August 10, 1997 the Office received a response and a packet of materials from appellant, who indicated that she never had an injury to her hand but had a previous claim for her back and shoulders. She submitted progress notes and reports dating from 1991 to 1997, related to treatment for bicipital tendinitis, carpal tunnel syndrome, right shoulder bursitis, cervical spine spasm and arthritis. An April 18, 1997 report from a physician whose signature is illegible contained a diagnosis of left bicipital tendinitis, and right carpal tunnel syndrome. None of the reports addressed how appellant's carpal tunnel syndrome was related to factors of her federal employment.

By decision dated September 9, 1997, the Office denied appellant's claim as the evidence was insufficient to establish an injury due to the claimed employment factors.¹

On September 23, 1997 additional evidence was received by the Office, including a schedule award claim, attending physician's reports, disability certificates, nerve conduction studies and duplicates of previously submitted reports. In a December 21, 1998 report, Dr. Waqar Miam, a physician of unknown specialty, diagnosed left shoulder tendinitis and right carpal tunnel syndrome. He advised that appellant should be placed on permanent light duty with no lifting over 20 pounds. In a December 11, 2000 attending physician's report, Dr. Edward Walton, Board-certified in emergency medicine,² diagnosed right carpal tunnel syndrome and checked the box "yes" in response to whether appellant's condition was caused or aggravated by an employment activity.

Appellant twice appealed to the Board seeking review of the Office's September 9, 1997 decision. However, the Board found that the appeals, filed on February 18, 1999 and July 31, 2000, were not made within one year of the Office's September 9, 1997 decision.³

By letter dated November 18, 2003, appellant filed a request for reconsideration with the Office. In a decision dated December 8, 2003, the Office found that appellant's request for reconsideration was not timely filed and did not present clear evidence of error.

¹ The Office found that the evidence of file supported that appellant experienced the claimed employment factors; however, the medical evidence of record was not sufficient because a diagnosed condition linked to work-related activities was not submitted with the claim. Appellant was also advised to submit the medical evidence with respect to her accepted condition of bilateral bicipital tendinitis and request that the claim be reopened.

² He is also Board-certified in pediatric emergency medicine.

³ Docket No. 99-1245, order dismissing appeal (issued June 29, 1999); Docket No. 00-2520, order dismissing appeal (issued March 30, 2001). The facts and history surrounding the prior appeals are set forth in the prior decisions and are hereby incorporated by reference.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act does not entitle a claimant to a review of an Office decision as a matter of right.⁴ This section vests the Office with discretionary authority to determine whether it will review an award for or against payment of compensation.⁵ The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁶ 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.⁷ 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.⁸ 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.⁹

ANALYSIS

The Office issued a merit decision on September 9, 1997, which denied appellant's claim on the basis that the evidence was insufficient to establish that appellant sustained an injury as alleged. Appellant's request for reconsideration was dated November 18, 2003. As appellant's request was filed more than one year after the Office's September 9, 1997 decision, it is not timely filed and appellant must demonstrate "clear evidence of error" on the part of the Office in issuing its September 9, 1997 decision.

To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by the Office.¹⁰ The evidence must be positive, precise and explicit, and it must be apparent on its face that the Office committed an error.¹¹ Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.¹² It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹³ 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

⁴ 5 U.S.C. § 8128(a); see *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁵ 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).

⁶ 20 C.F.R. § 10.607 (1999).

⁷ 20 C.F.R. § 10.607(a) (1999).

⁸ 20 C.F.R. § 10.607(b) (1999).

⁹ See *Nelson T. Thompson*, 43 ECAB 919 (1992).

¹⁰ See *Dean D. Beets*, 43 ECAB 1153 (1992).

¹¹ See *Leona N. Travis*, 43 ECAB 227 (1991).

¹² See *Jesus D. Sanchez*, 41 ECAB 964 (1990).

¹³ See *Leona N. Travis*, *supra* note 11.

must be of sufficient probative value to *prima facie* shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of the Office decision.¹⁴

Subsequent to the Office's September 9, 1997 decision denying benefits, appellant submitted additional evidence that included a schedule award claim, numerous reports, disability certificates and nerve conduction studies.¹⁵ However, this evidence does not address the relevant issue in the case, which is whether appellant's carpal tunnel syndrome was causally related to factors of her federal employment. In the December 21, 1998 report from Dr. Miam, he provided a diagnosis; however, he did not address causal relationship.¹⁶ Dr. Walton, in his December 11, 2002 report, provided a diagnosis, and a response of "yes" to indicate that appellant's condition was related to her employment. However, the checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.¹⁷ Appellant did not provide the legal or medical evidence necessary to raise a substantial question as to the correctness of the Office's September 9, 1997 decision or present evidence which, on its face, showed that the Office made an error in denying the claim.¹⁸

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for reconsideration of the merits on the grounds that it was untimely filed and failed to show clear evidence of error.

¹⁴ *Thankamma Mathews*, 44 ECAB 765, 770 (1993).

¹⁵ Appellant also submitted a number of documents that we already included in the record. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case. *David J. McDonald*, 50 ECAB 185 (1998); *Khambandith Vorapanya*, 50 ECAB 490 (1999).

¹⁶ The submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case. *David J. McDonald*, *supra* note 15.

¹⁷ *Calvin E. King*, 51 ECAB 394 (2000); *Linda Thompson*, 51 ECAB 694 (2000).

¹⁸ *Jadine Jackson*, 53 ECAB ____ (Docket No. 01-1473, issued February 20, 2002).

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member