

FACTUAL HISTORY

On September 7, 2000 appellant, then a 44-year-old mark-up clerk, filed an occupational disease claim alleging that she sustained an injury to her left hand, wrist and shoulder as a result of her federal duties. The employing establishment controverted the claim. By decision dated November 6, 2000, the Office denied the claim on the grounds that she failed to establish that her condition was related to factors of her federal employment. On December 10, 2000 appellant requested review of the written record. In a decision dated November 7, 2001, an Office hearing representative found that she had not met her burden in establishing that her left upper extremity pain complaints were causally related to factors of her federal employment. The hearing representative noted that the September 19, 2000 report of Dr. K.E. Vogel, a Board-certified neurosurgeon, provided no specific diagnosis and did not address causal relationship of appellant's mild cervical and right shoulder pain and the pain in her hands.

By letter dated November 2, 2002 and received by the Office on November 8, 2002, appellant requested that the Office reconsider the November 7, 2001 decision. On May 15, 2003 the Office denied appellant's request for reconsideration as it was insufficient to warrant merit review.

On October 15, 2003 appellant filed an appeal of the March 15, 2003 decision with the Board. Pursuant to her request, the Board dismissed the appeal so that she could submit additional evidence to the Office with a request for reconsideration.¹

By letter dated March 9, 2004, appellant requested reconsideration. She submitted medical reports by Dr. Claude S. Williams, IV, a Board-certified orthopedic surgeon, dated June 19, 2002 through December 30, 2003. The physician listed his diagnoses as bilateral hand pain, bilateral carpal tunnel syndrome and bilateral flexor tendinitis.

By decision dated August 24, 2004, the Office denied appellant's claim for reconsideration for the reason that it was not timely filed and failed to show clear evidence of error.

LEGAL PRECEDENT

The Office, through regulation, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of the Federal Employees' Compensation Act.² The Office will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.³ When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.⁴ The Office procedures states

¹ *Barbara C. Hamilton*, Docket No. 04-168 (issued February 27, 2004).

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.607; *see also Alan G. Williams*, 52 ECAB 180 (2000).

⁴ *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitations set forth in 20 C.F.R. § 10.607, if the claimant's application for review shows "clear evidence of error" on the part of the Office.⁵ 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.⁶

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office. The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error. Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error. It is not enough to merely show that the evidence could be construed so as to produce a contrary conclusion. This entails a limited review by the Office of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of the Office. To show clear evidence of error, 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 favor of the claimant and raise a substantial question as to the correctness of the Office decision. The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of the Office such that the Office abused its discretion in denying merit review in the face of such evidence.⁷

ANALYSIS

The Board finds that appellant failed to file a timely request for reconsideration. The Office's procedures provide a one-year time limitation period for requesting reconsideration which begins on the date of the original Office decision. The right to reconsideration within one year accompanies any subsequent merit decision on the issues.⁸ The Board notes that the last merit decision was the hearing representative's decision of November 7, 2001. As appellant's March 9, 2004 letter requesting reconsideration was submitted more than one year after the last merit decision, the request was untimely.

As appellant's request was filed more than one year after the November 7, 2001 merit decision, she must demonstrate "clear evidence of error" on the issue which was decided by the Office. Appellant submitted medical reports by Dr. Williams, who diagnosed her with bilateral carpal tunnel syndrome and bilateral flexor tendinitis. Although these reports address a medical diagnosis, they do not address the issue of whether appellant's medical condition was caused by her federal employment. Accordingly, these statements are insufficient to establish clear evidence of

⁵ See *Gladys Mercado*, 52 ECAB 255 (2001). Section 10.607(b) provides, "[The Office] will consider an untimely application for reconsideration only if the application demonstrates evidence of error on the part of [it] in its most recent merit decision. The application must establish, on its face, that such decision was erroneous. 20 C.F.R. § 10.607(b) (1999).

⁶ See *Nelson T. Thompson*, 43 ECAB 919 (1992).

⁷ *Pete F. Dorso*, 52 ECAB 424 (2001); *John Crawford*, 52 ECAB 395 (2001).

⁸ *Veletta C. Coleman*, 48 ECAB 367 (1997); *Larry L. Lilton*, 44 ECAB 243 (1992).

error regarding the denial of appellant's claim.⁹ Accordingly, the Board finds that the evidence submitted in support of her application for review does not raise a substantial question as to the correctness of the Office's November 7, 2001 decision. The evidence is insufficient to demonstrate clear evidence of error.

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.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 24, 2004 is affirmed.

Issued: April 13, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁹ See *Linda K. Cela*, 52 ECAB 288, 290 (2001) (evidence that is vague or incomplete about the matter in issue is insufficient to establish clear evidence of error).