

January 9, 2003 medical report and electromagnetic (EMG) report from Dr. Peter J. Bellafiore, a Board-certified neurologist, which diagnosed moderate bilateral carpal tunnel syndrome, worse on the right.

In an April 1, 2003 letter, the Office advised appellant that the materials she submitted were insufficient to establish her claim under the Federal Employees' Compensation Act and that she provide additional factual and medical information. In response, appellant submitted a statement dated April 9, 2003, a statement from the employing establishment, and a May 13, 2003 medical treatment note from Dr. Stephen B. Gross, a Board-certified orthopedic surgeon.

By decision dated June 11, 2003, the Office denied appellant's claim on the grounds that the medical evidence did not establish that the claimed medical condition resulted from her employment activities.

In a December 14, 2004 letter, appellant requested reconsideration of the Office's June 11, 2003 decision. She submitted copies of previously considered medical reports and statements together with new medical evidence.

In medical treatment reports dated April 9 to June 10, 2003 and November 9, 2004, Dr. Gross noted appellant's progress. On April 9, 2003 Dr. Gross noted that appellant worked for the employing establishment for 16 years, having been on full-time status for the last six years. He assessed bilateral carpal tunnel syndrome and opined that appellant's condition was related to her work as a letter carrier. On November 9, 2004 Dr. Gross reiterated that he had felt in April 2003 that appellant's bilateral carpal tunnel syndrome was work related.

In a September 20, 2004 medical report, Dr. H. Kirk Watson, a Board-certified orthopedic surgeon specializing in hand surgery, noted that appellant had been working as much as 6 days a week for up to 10, and occasionally 12, hours a day. He stated that this has added to appellant's years of mail carrying service and that she had developed carpal tunnel syndrome with symptomatic thumbs.

By decision dated March 15, 2005, the Office denied appellant's request for reconsideration on the grounds that it was not timely filed and failed to present clear evidence of error.

LEGAL PRECEDENT

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of the Act.¹ 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.² 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

¹ 5 U.S.C. §§ 8101-8193, 5 U.S.C. § 8128(a).

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

final merit decision was in error.³ The Office procedures state that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation 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.⁴ 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.⁵

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 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.⁶ It is not enough merely to 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's decision.⁷ 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.⁸

ANALYSIS

The Office found that appellant failed to file a timely application for review. In implementing the one-year time limitation, the Office's procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues.⁹ The most recent merit decision in this case was the Office's June 11, 2003 decision. As appellant's December 14, 2004 request for reconsideration was submitted more than one year after the most recent merit decision of record, it was untimely. Consequently,

³ *Veletta C. Coleman*, 48 ECAB 367 (1997).

⁴ 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 clear evidence of error on the part of [it] in its most recent decision. The application must establish, on its face, that such decision was erroneous. 20 C.F.R. § 10.607(b).

⁵ See *Nelson T. Thompson*, 43 ECAB 919 (1992).

⁶ *Dorletha Coleman*, 55 ECAB ____ (Docket No. 03-868, issued November 10, 2003); *Leon J. Modrowski*, 55 ECAB ____ (Docket No. 03-1702, issued January 2, 2004).

⁷ *Id.* See also *Alberta Dukes*, 56 ECAB ____ (Docket No. 04-20, issued January 11, 2005).

⁸ *Pete F. Dorso*, 52 ECAB 424 (2001); *John Crawford*, 52 ECAB 395 (2001).

⁹ *Veletta C. Coleman*, *supra* note 3; *Larry L. Lilton*, 44 ECAB 243 (1992).

appellant must demonstrate clear evidence of error on the part of the Office in denying her claim for compensation.¹⁰

The Board has reviewed evidence submitted with appellant's reconsideration request and concludes that appellant has not established clear evidence of error. In this case, the underlying issue is medical in nature. As early as April 2003, Dr. Gross opined that appellant's bilateral carpal tunnel syndrome was work related. Dr. Watson also opined that appellant developed carpal tunnel syndrome with symptomatic thumbs. However, neither Dr. Gross nor Dr. Watson provided a rationalized opinion supporting the causal relationship of the diagnosed condition to appellant's federal employment. These reports do not establish that it was error on the part of the Office in rejecting her claim. The Board has held that "clear evidence of error" is intended to represent a difficult standard. Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error and would not require a review of the case.¹¹ The submitted medical reports do not raise a substantial question as to the correctness of the Office's June 11, 2003 merit decision and are of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim. Accordingly, the Board finds that appellant has not established clear evidence of error in the Office's refusal to reopen her case for further review on its merits. The Board finds that these records are insufficient to raise a substantial question as to the correctness of the Office's June 11, 2003 denial of her claim. The Office properly denied appellant's reconsideration request.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for review on March 15, 2005 on the grounds that appellant's reconsideration request was untimely and failed to establish clear evidence of error.

¹⁰ 20 C.F.R. § 10.607(b); *Donna M. Campbell*, 55 ECAB ____ (Docket No. 03-2223, issued January 9, 2004).

¹¹ *See Pete F. Dorso*, 52 ECAB 424 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 15, 2005 is affirmed.

Issued: November 25, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board