

February 2, 1989. In a decision dated September 30, 2003, the Office found that appellant no longer had residuals of her February 2, 1989 employment injury. The Office, therefore, terminated wage-loss compensation and medical benefits effective October 4, 2003.² An Office hearing representative affirmed the termination of benefits by decision dated September 7, 2004. On November 19, 2004 appellant submitted additional medical evidence and requested reconsideration. In a January 10, 2005 decision, the Office reviewed the merits of the claim, but denied modification. On January 13, 2006 appellant requested reconsideration.³ The Office issued an April 26, 2006 decision denying reconsideration because appellant's request was untimely and she failed to demonstrate clear evidence of error.

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 The Office has discretionary authority in this regard and it has imposed certain limitations in exercising its authority.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 When a request for reconsideration is untimely, the Office will undertake a limited review to determine whether the application presents "clear evidence of error" on the part of the Office in its "most recent merit decision."⁷

ANALYSIS

Appellant's request for reconsideration was postmarked January 13, 2006, which is more than a year after the Office's January 10, 2005 merit decision.⁸ Because appellant's request was

² The September 30, 2003 decision effectively modified a December 21, 1993 wage-earning capacity determination based on a material change in appellant's injury-related condition.

³ Appellant submitted a handwritten request for reconsideration dated January 13, 2006. She also submitted the appeal request form that accompanied the January 10, 2005 Office decision, which is signed and dated January 10, 2006. The Office retained appellant's envelope, which bears a January 13, 2006 postmark and a handwritten notation: "Reconsideration Request."

⁴ This section provides in pertinent part: "[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) (2000).

⁵ 20 C.F.R. § 10.607 (2006).

⁶ 20 C.F.R. § 10.607(a).

⁷ 20 C.F.R. § 10.607(b). To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by the Office. See *Dean D. Beets*, 43 ECAB 1153 (1992). The evidence must be positive, precise and explicit and it must be apparent on its face that the Office committed an error. See *Leona N. Travis*, 43 ECAB 227 (1991). It is not enough to merely show that the evidence could be construed to produce a contrary conclusion. *Id.* Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error. See *Jesus D. Sanchez*, 41 ECAB 964 (1990). 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. *Thankamma Mathews*, 44 ECAB 765, 770 (1993).

⁸ If a request is submitted by mail, timeliness will be determined by the postmark if legible. 20 C.F.R. § 10.607(a).

untimely, she must demonstrate “clear evidence of error” on the part of the Office in terminating her wage-loss compensation and medical benefits.⁹

In her January 13, 2006 request, appellant claimed that she had “sent medical evidence [twice] a year verifying [her] disability.” She also indicated that her symptoms were the same as before and nothing had changed. Appellant asked the Office to “closely” examine the record on reconsideration. The January 13, 2006 request for reconsideration did not specify what evidence appellant allegedly submitted. The record as it currently exists does not include any evidence received by the Office after the January 10, 2005 decision. Appellant has not demonstrated clear evidence of error. She simply admonished the Office to “closely” reexamine the record. As there is no clear evidence of error, there is no justification for further merit review. Accordingly, the Office properly declined to reopen appellant’s case under 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant’s January 13, 2006 request was untimely and she failed to demonstrate clear evidence of error and, therefore, she is not entitled to further merit review.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2006 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: February 27, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees’ Compensation Appeals Board

David S. Gerson, Judge
Employees’ Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees’ Compensation Appeals Board

⁹ 20 C.F.R. § 10.607(b).