

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE F. MURRAY and U.S. POSTAL SERVICE,
POST OFFICE, Grand Rapids, MI

*Docket No. 02-944; Submitted on the Record;
Issued January 2, 2003*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly found that appellant's request for reconsideration was not timely filed and that appellant failed to present clear evidence of error.

The Board's jurisdiction to consider and decide appeals from a final decision of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed the appeal with the Board on March 25, 2002, the only decision before the Board is the Office's January 22, 2002 decision, denying appellant's request for reconsideration.

The Office accepted appellant's claim for lumbosacral myofascitis and lumbar syndrome. By decision dated April 8, 1996, the Office terminated appellant's compensation benefits, stating that the evidence of record established that appellant no longer suffered from any residuals relating to the October 14, 1988 employment injury. On June 5, 1998 appellant requested reconsideration of the Office's decision. By decision dated July 1, 1998, the Office denied appellant's request for reconsideration, stating that the request, filed more than a year after the April 8, 1996 decision, was untimely and that appellant failed to show clear evidence of error.

On November 7, 2001 appellant requested reconsideration of the Office's decision and submitted a medical report dated July 3, 2001 from a physician's assistant, John A. Dykstra and a medical report dated April 4, 2001 from Dr. S. Kondapaneni, a Board-certified physiatrist. In his April 6, 2001 report, Dr. Kondapaneni considered appellant's history of injury, performed a physical examination and reviewed x-rays. He diagnosed chronic back pain with left-sided radicular symptoms, "rule out lumbosacral radiculopathy," and evidence of degenerative joint disease and degenerative disc disease in the lumbar spine along with old compression fractures at L1, L2 and L3. Dr. Kondapaneni also diagnosed old fractures of right femur and right ankle with

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

residual weakness and shortening of the right lower extremity. He prescribed conservative treatment, recommended that appellant obtain a computerized axial tomography (CAT) scan, and opined that appellant could not work and should not perform repetitive bending or activities which increased his back pain.

By decision dated January 22, 2002, the Office denied appellant's request for reconsideration, stating that appellant's November 7, 2001 letter requesting reconsideration which was filed more than a year after the last merit decision on April 8, 1996 was untimely, and that appellant failed to show clear evidence of error.

The Board finds that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).² The Office will not review a decision denying or terminating benefits unless the application for review is filed within one year of the date of that decision.³ The Office will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error by the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.⁴

To show clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by the Office.⁵ The evidence must be positive, precise and explicit and must be manifest on its fact that the Office committed an error.⁶ Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.⁷ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.⁸ 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.⁹

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.607(a); *see also Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

⁴ 20 C.F.R. § 10.607(b); *see Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁵ *Willie J. Hamilton*, 52 ECAB ____ (Docket No. 00-1468, issued June 5, 2001); *Dean D. Beets*, 43 ECAB 1153 (1992).

⁶ *Willie J. Hamilton*, *supra* note 5; *Leona N. Travis*, 43 ECAB 227 (1991).

⁷ *See Jesus D. Sanchez*, *supra* note 4.

⁸ *Leona N. Travis*, *supra* note 6.

⁹ *Willie J. Hamilton*, *supra* note 5.

In this case, Mr. Dykstra's July 3, 2001 report is not relevant because he is a physician's assistant and therefore he is not a doctor within the meaning of the Act.¹⁰ In his April 6, 2001 report, Dr. Kondapaneni diagnosed, *inter alia*, chronic back pain with left-sided radicular symptoms, degenerative joint disease, degenerative disc disease in the lumbar spine, and old compression fractures at L1, L2 and L3. He prescribed treatment and opined that appellant was unable to work. Dr. Kondapaneni did not address, the issue of whether appellant's current back condition was causally related to his employment and therefore his opinion is not probative. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ Since appellant did not present evidence on the relevant issue, *i.e.*, whether his back condition is causally related to the October 14, 1988 employment injury. None of the new evidence submitted raises a substantial question as to the correctness of the Office's April 8, 1996 merit decision and therefore fails to demonstrate clear evidence of error.

The January 22, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 2, 2003

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ *Lyle E. Dayberry*, 49 ECAB 369, 372 (1998).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215, 218 n. 9 (1997).