

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLY R. BULLION and TENNESSEE VALLEY AUTHORITY,
POWER PRODUCTION, Chattanooga, Tenn.

*Docket No. 96-690; Submitted on the Record;
Issued April 22, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

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

This case has been before the Board on six previous occasions. In a December 11, 1984 decision,¹ the Board found that appellant had no work-related disability after January 2, 1980 causally related to his December 13, 1970 work-related low back strain. The Board also found that appellant's right carpal tunnel syndrome was not causally related to his December 13, 1970 work injury. In a November 29, 1985 decision,² the Board found that the Office's refusal to reopen appellant's case for a review on the merits pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion. In an October 16, 1986 decision,³ the Board found that the weight of the medical evidence established that appellant had no cervical or lumbar disability causally related to his December 13, 1970 work injury. In a February 12, 1988 decision,⁴ the Board found that the Office's refusal to reopen appellant's case for a review on the merits pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion. In a September 13, 1989 order dismissing appeal,⁵ the Board found that it had no jurisdiction over the appeal as more than one year had elapsed since the date that the Office issued its most recent final decision. In an October 8, 1991 decision,⁶ the Board found that the Office's refusal to grant

¹ Docket No. 84-1558.

² Docket No. 86-9.

³ Docket No. 86-1898.

⁴ Docket No. 87-1857.

⁵ Docket No. 89-1708.

⁶ Docket No. 91-850.

appellant's request for an oral hearing before an Office representative pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion. The facts of the case contained in the prior Board decisions are incorporated herein by reference.

By letter received February 13, 1995, appellant requested that his claims for compensation be reconsidered. In support of his request, appellant submitted a letter dated December 14, 1979 from Dr. J.G. Shuttleworth and treatment notes dated March 13 and 17, 1986 from Dr. Marc R. Michaud. Appellant additionally submitted an x-ray report dated January 28, 1980, the results of a November 30, 1973 myelogram and a discharge summary dated December 16, 1981 from South Highlands Hospital. Finally, appellant submitted a witness statement from his former foreman, Mr. L.M. Cranford, describing and illustrating the circumstances of appellant's December 13, 1970 employment injury.

The Board finds that the Office properly determined that appellant's application for review was not timely filed and failed to present clear evidence of error.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). 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.⁷ 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.⁸

As more than one year elapsed from the October 16, 1986 merit decision of the Board to appellant's February 5, 1995 reconsideration request, the request for reconsideration is untimely. In addition, the evidence submitted by appellant in support of his reconsideration request does not establish clear evidence of error, as it does not raise a substantial question as to the correctness of the Office's most recent merit decision, and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim.

The new evidence submitted by appellant in support of his request for reconsideration consisted of copies of reports and letters already contained in the record at the time of the last merit decision. The Board has consistently held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁹ In addition, the Board notes that appellant did not advance a point of law or fact not previously considered by the Office nor did he show that the Office erroneously applied or interpreted a point of law.

⁷ 20 C.F.R. § 10.138(b)(2). *Gregory Griffin*, 41 ECAB 186 (1989); *petition for recon. denied*, 41 ECAB 458 (1990).

⁸ *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁹ *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 398 (1984); *Bruce E. Martin*, 35 ECAB 1093 (1984).

As appellant has failed to submit clear evidence of error, the Office did not abuse its discretion in denying further review of the case.

The December 12, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
April 22, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member