

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD JOSEPH MURRAY, JR. and DEPARTMENT OF THE ARMY,
MONROE AREA OFFICE FOR OPERATIONS, L.C. BOGGS LOCK & DAM, Vick, LA

*Docket No. 00-257; Submitted on the Record;
Issued December 6, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

On September 17, 1997 appellant, then a 41-year-old lock and dam operator, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he suffered a heart attack as a result of his employment. He also noted that he was suffering from stress, depression and back trouble relating to his federal employment. In support of his claim, appellant filed personal statements alleging various problems with his employment which he alleged led to his heart attack, including stress, discrimination, abuse, yelling, nonrecognition, lack of training, verbal abuse, insults, denial of a position he allegedly deserved and problems with a coworker. He also submitted medical records in support of his claim. These records indicate that appellant was admitted to Rapides Regional Medical Center on May 21, 1997 for congestive heart failure, three vessel coronary artery disease and ischemic cardiomyopathy. While at the hospital, he underwent a left heart catheterization, coronary angiogram and left ventriculography. Appellant submitted no medical report linking appellant's heart condition with his federal employment.

By letter dated November 12, 1997, the Office requested that appellant submit further information in support of his claim, including a comprehensive medical report in which appellant's treating physician explained why he believed that the exposure or incidents in appellant's federal employment contributed to his condition.

By decision dated December 24, 1997, the Office denied appellant's claim as he had not met the requirements for establishing that he sustained an injury as alleged.

By letter dated March 10, 1999, appellant requested reconsideration. In support thereof, he submitted clinic notes for treatment during the period July 18, 1997 to September 12, 1999

which, for the most part, detail his treatment for a back injury. These medical notes do not link appellant's cardiac problems to his federal employment.

In a decision dated June 23, 1999, the Office denied appellant's request for reconsideration. The Office noted that appellant's request for reconsideration was untimely filed and did not demonstrate clear evidence of error.

By letters dated June 30, 1999, appellant requested a formal hearing, review of the record and review by this Board. By letter dated July 14, 1999, he was informed that he must choose a hearing, reconsideration or a review by the Board. This Board wrote appellant a similar letter on August 31, 1999.

By letter dated July 19, 1999, appellant requested a hearing. In support of his request, he provided a medical report relating to his back strain.

By decision dated August 25, 1999, the Office denied appellant's request for review for the reasons that it was not timely filed and the evidence submitted was not sufficient to establish clear evidence of error to warrant review of its prior decision.

On September 3, 1999 appellant requested review before this Board.

The Board finds that the Office properly determined that appellant's requests for reconsideration were untimely filed and did not demonstrate clear evidence of error.

Section 8128(a) of the Federal Employees Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease or increase the compensation awarded; or

(2) award compensation previously refused or discontinued."¹

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As once such limitation, 20 C.F.R. § 10.607(a) provides that the Office will not review a decision unless the application for review is filed within one year of the date of that decision. However, the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation, if the claimant's application for review shows clear evidence of error on the part of the Office in its most recent merit decision.² To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by the Office. The evidence must be positive, precise and explicit and must be

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.607(b).

manifested on its face that the Office committed an error.³ Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.⁴ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.⁵ This entails a limited review by the Office of the evidence previously of record and whether the new evidence demonstrates clear error on the part of the Office.⁶ 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 a merit review in the face of such evidence.⁷

In the case at hand, appellant first requested review of the December 24, 1997 decision by letter dated March 10, 1999. As this letter was filed over one year after the December 24, 1997 decision, the Office reviewed his request for reconsideration under the clear evidence of error standard. As appellant did not submit any relevant evidence regarding his cardiac condition, but rather submitted a medical report which deals largely with an alleged back injury which is not the subject of this claim, the Office properly denied appellant's request for reconsideration.⁸

The Board finds that appellant failed to establish clear evidence of error in the Office's December 24, 1997 decision.

³ 20 C.F.R. § 10.607(b); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

⁴ *Jimmy L. Day*, 48 ECAB 654 (1997).

⁵ *Id.*

⁶ *Id.*

⁷ *Thankamma Mathews*, 44 ECAB 7765, 770 (1993).

⁸ Appellant alleged that on November 25, 1997, he requested a hearing. There is no evidence in the record of such request. Furthermore, as this request would have been prior to the initial December 24, 1997 decision, it would have been premature.

The decisions of the Office of Workers' Compensation Programs dated August 25 and June 23, 1999 are affirmed.⁹

Dated, Washington, DC
December 6, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁹ The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal. 20 C.F.R. § 501.3(d). Since appellant filed this appeal on September 3, 1999, the only decisions that this Board has jurisdiction over are the June 23 and August 25, 1999 decisions denying reconsideration.