

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT A. REDMOND and U.S. POSTAL SERVICE,
POST OFFICE, Mount Sterling, KY

*Docket No. 00-1403; Submitted on the Record;
Issued April 9, 2001*

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 April 11, 1994 request for reconsideration.

In its most recent merit decision, dated January 28, 1993, the Office denied modification of its prior decision, which rejected appellant's claim for a schedule award. The evidence failed to establish that appellant sustained a permanent impairment to a scheduled member due to factors of his federal employment. While a claimant might be entitled to a schedule award for impairment to an upper or lower extremity when the cause of the impairment originates in the spine, an award of compensation must be supported by rationalized medical opinion evidence based on a complete and accurate history supporting a causal relationship between the claimed condition and employment factors. The Office found that appellant failed to present such evidence.

On April 11, 1994 appellant requested reconsideration of the January 29, 1993 decision. He submitted a December 20, 1993 letter to Dr. Gregory L. Anderson, a neurologist, requesting an explanation of how his condition was related to work.

In a December 30, 1993 report, Dr. Anderson noted the temporal association between appellant's pain and his fall at work. He also noted a denial of prior neck or back pain. Dr. Anderson stated that he had no other way to prove the association between appellant's pain from significant cervical degenerative disease and the employment injury. Dr. Anderson performed a neurological evaluation of appellant on November 22, 1993. He reported that appellant had a work-related fall in 1987 which was the inciting cause of his subsequent chronic neck and low back pain. He opined that appellant's pain was related to his previous injury.

Appellant also submitted a May 20, 1991 magnetic resonance imaging report relating to the cervical spine and a June 16, 1992 report stating that appellant's sensorineural hearing loss was possibly related to head injury.

In a decision dated February 1, 2000, the Office denied appellant's request for reconsideration. The Office found that appellant filed his April 11, 1994 request more than a year after the Office's January 28, 1993 decision and was therefore untimely. The Office also found that appellant's request failed to present clear evidence of error in the Office's January 28, 1993 decision.

The Board finds that the Office acted within its discretion in denying appellant's April 11, 1994 request for reconsideration.

Section 10.607 of the Code of Federal Regulations provides that an application for reconsideration must be sent within one year of the date of the Office's decision for which review is sought. The Office will consider an untimely application only if the application demonstrates clear evidence of error on the part of the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.¹

Because appellant sent his April 11, 1994 request for reconsideration more than one year after the Office's most recent merit decision on January 28, 1993, his request is untimely. To obtain a review of the merits of his claim, therefore, his request must demonstrate clear evidence of error on the part of the Office.

The Board finds that appellant's request for reconsideration fails to demonstrate clear evidence of error. The Office denied appellant's claim on January 28, 1993 for failure to present rationalized medical opinion evidence based on a complete and accurate history supporting a causal relationship between the claimed condition and employment factors. With his April 11, 1994 request for reconsideration, appellant submitted medical opinion evidence tending to support a causal relationship between his neck or back pain and his fall at work in 1987. This evidence, however, lacks probative value to establish the element of causal relationship. Dr. Anderson could support causal relationship only through a temporal association between appellant's pain and his fall at work. The Board has held that, when a physician concludes that a condition is causally related to employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.² Dr. Anderson provided no medical rationale to explain how the fall at work in 1987 caused the condition for which appellant seeks a schedule award.

None of the other evidence appellant submitted, either with his April 22, 1994 request for reconsideration or subsequently, establishes the critical element of causal relationship. Without solid proof that his diagnosed neck or back condition is related to the fall in 1987, appellant cannot establish his entitlement to a schedule award for any resulting permanent impairment to an upper or lower extremity.

As appellant's untimely request for reconsideration fails to establish on its face that the Office's January 28, 1993 decision was erroneous, the Board will affirm the denial of that request.

¹ 20 C.F.R. § 10.607.

² *Thomas D. Petrylak*, 39 ECAB 276 (1987).

The February 1, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 9, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member