

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCES E. HENDERSON and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 02-2045; Submitted on the Record;
Issued December 16, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

The Office accepted appellant's claim for left knee contusions and left deep vein thrombosis resulting from a November 25, 1991 employment injury. Appellant initially returned to light-duty work and returned to her regular, full-time work on February 19, 1992. She subsequently filed claims for recurrences of disability. However, upon being informed by the Office that she should file a claim for occupational disease because new factors were involved, appellant filed an occupational claim on May 17, 1996. Appellant indicated that she first became aware of her condition on December 26, 1991 and that she learned it was work-related on an unspecified date in 1992.

By decision dated February 10, 1997, the Office denied appellant's claim, stating that the evidence of record failed to demonstrate that appellant sustained an injury on or after December 26, 1991.

Appellant submitted two requests for reconsideration of the Office's decision, one was undated and was received by the Office on March 26, 1998 and the other was dated April 23, 2001 and was received by the Office on April 25, 2001. She submitted evidence to support her reconsideration requests.

By decision dated July 19, 2001, the Office stated that appellant's requests for reconsideration, which were postmarked March 26, 1998 and April 25, 2001, respectively, were filed more than one year after the Office's February 10, 1997 decision and therefore were untimely. The Office also stated that appellant did not establish clear evidence of error.

The Board finds that the Office properly determined that appellant's requests for reconsideration were 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 July 16, 2002, the only decision before the Board is the Office's July 18, 2001 decision, denying appellant's requests for reconsideration.

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 face 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

Evidence appellant submitted with her March 26, 1998 request for reconsideration included a medical report from Dr. Jared P. Szidon, a Board-certified internist with a specialty in cardiovascular disease, dated August 12, 1997 and reports from Dr. Brian F. Scullion, a Board-certified internist, one dated January 12, 1995 and updated on July 22, 1996. Appellant also submitted a pulmonary laboratory test dated September 9, 1997, an echocardiography report dated September 9, 1997 and return to work or work restriction forms dated February 20, 1992 to June 23, 1997. She submitted laboratory reports on administration of her medicine dated

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

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*, 41 ECAB 964 (1990).

⁸ *Leona N. Travis*, *supra* note 6.

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

December 29, 1995 to September 4, 1997 and the employing establishment's medical records dated from November 16, 1990 through June 21, 1995. Appellant submitted correspondence with the Office in October and November 1992 regarding her right to buy back leave, an undated letter from her to the Office and copies of her claims for recurrences of disability dated January 7 and 8, 1992 and for occupational disease dated May 17, 1996.

The evidence appellant submitted in support of her April 23, 2001 request for reconsideration consisted of medical records including two reports from Dr. Brian J. Cole, a Board-certified orthopedic surgeon, dated December 9, 1997, a postoperative report dated February 25, 1998 regarding a tumor in appellant's right forearm and progress or referral notes dated December 9, 1997 through April 6, 1998. Appellant also submitted a magnetic resonance imaging (MRI) scan of the right elbow dated December 24, 1997 and laboratory reports on the administration of her medicine dated January 30, 1996 to December 3, 1997. Appellant submitted work restriction forms dated June 18, 1998 to April 17, 2001, the Office's approval of her request to take family or medical leave dated January 10, 2001 and receipts of payment of medical expenses dated April 17, 2001.

To establish an occupational claim, appellant must submit rationalized medical evidence containing a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors.¹⁰ In this case, the only medical evidence appellant submitted which address causation were Dr. Cole's reports dated December 9, 1997, in which he noted that there was "unclear etiology" of referred pain related to an antecubital mass and recommended that appellant obtain an MRI scan. In the other December 9, 1997 report, Dr. Cole noted that he saw appellant due to the onset of a mass in her antecubital region of her right elbow and that she had neurologic complaints radiating distally. He stated that appellant's symptoms were of "unknown significance," and reiterated that appellant should obtain an MRI scan. These reports are not sufficient to establish error by the Office in denying appellant's claim.

Dr. Szidon's August 12, 1997 and Dr. Scullion's January 12, 1995 and July 22, 1996 reports address the nature of appellant's condition, *i.e.*, her pulmonary embolism, exertional dyspnea and deep venous thrombosis, but did not address causation. The diagnostic tests in the record including the September 9, 1997 pulmonary laboratory tests, the September 9, 1997 echocardiography and the December 24, 1997 MRI scan do not address causation. The laboratory reports on the administration of appellant's medicine dated December 25, 1995 to December 3, 1997, the employing establishment's medical records dated November 16, 1990 through June 21, 1995 and the return to work or work restriction forms dated February 20, 1992 through April 17, 2001 also do not address causation. Correspondence appellant submitted between her and the Office regarding the Office's approval of family or medical leave and her right to buy back leave, copies of receipts for medical expenses, and copies of her compensation claims are not relevant to establishing the cause of her medical condition. Appellant did not submit sufficient evidence to demonstrate clear evidence of error in the Office's decision. The Office properly denied her requests for reconsideration.

¹⁰ See Victor J. Woodhams, 41 ECAB 345, 352 (1989).

The July 19, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 16, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member