

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICIA A. KLAIBER and U.S. POSTAL SERVICE,  
POST OFFICE, Greensboro, NC

*Docket No. 02-940; Submitted on the Record;  
Issued September 11, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
WILLIE T.C. THOMAS

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.

On August 13, 2000 appellant, then a 47-year-old manual distribution clerk, filed an occupational claim alleging that she sustained a ruptured disc. By decision dated December 11, 2000, the Office denied the claim, stating that appellant failed to establish that she sustained an occupational injury due to the claimed employment factor. By letter dated November 6, 2001, appellant requested reconsideration of the Office's decision. By decision dated December 10, 2001, the Office denied appellant's request for reconsideration.

By letter dated January 19, 2001, appellant requested reconsideration of the Office's decision, contending that the Office erred in summarily denying her request. Appellant submitted an affidavit dated April 30, 2001 she had previously submitted and medical reports from her treating physician, Dr. Peter R. Bronec, a Board-certified neurological surgeon, dated August 6, November 1 and 29 and December 31, 2001. Appellant also submitted a medical report from Dr. Henry A. Pool, a neurological surgeon, dated June 7, 2001 and diagnostic tests consisting of an electromyogram and nerve conduction studies dated November 29, 2001.

By decision dated February 14, 2002, the Office denied appellant's request for reconsideration, stating that her request was untimely and that she failed to establish 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.<sup>1</sup> As appellant filed the appeal with the Board on March 14, 2002, the only decision

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

before the Board are the Office's February 14, 2002 and December 10, 2001 decisions, denying appellant's request for reconsideration.

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>2</sup> 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.<sup>3</sup> Appellant's letter dated January 19, 2002 was filed more than one year after the date of the last merit decision issued on December 11, 2000, and therefore her request for reconsideration is untimely. 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.

To show clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by the Office.<sup>4</sup> The evidence must be positive, precise and explicit and must be manifest on its fact that the Office committed an error.<sup>5</sup> Evidence which does not raise substantial questions concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.<sup>6</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>7</sup> 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.<sup>8</sup> The application must establish, on its face, that such decision was erroneous.<sup>9</sup>

In this case, among the medical evidence appellant submitted, only Dr. Bronec's December 31, 2001 report addresses causation. In that report, Dr. Bronec opined that it was "more likely than not" that appellant's employment caused an aggravation or acceleration of her underlying degenerative disc disease. He stated that appellant's sudden onset of pain in April 2000 when she lifted a tire out of a hamper suggested "the possibility of a disc herniation at that time vs. irritation to a cervical nerve root that may have already been crowded by her known uncovertebral spur formation." Dr. Bronec stated that he required a myelogram to clarify the nature of her back problem. With his words of "more than likely" and "possibility of a dis[c] herniation" Dr. Bronec's report is speculative. In his July 7, 2001 report, Dr. Pool stated that the history and mechanism of the June 1997 incident were "consistent" with his diagnosis of cervical

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<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.607(a). *See also Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

<sup>4</sup> *Willie J. Hamilton*, 52 ECAB \_\_\_\_ (Docket No. 00-1468, issued June 5, 2001); *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>5</sup> *Willie J. Hamilton*, *supra* note 4; *Leona N. Travis*, 43 ECAB 227 (1991).

<sup>6</sup> *See Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>7</sup> *Leona N. Travis*, *supra* note 5.

<sup>8</sup> *Willie J. Hamilton*, *supra* note 4.

<sup>9</sup> 20 C.F.R. § 10.607(b); *see Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, *supra* note 6.

disc herniation. Dr. Pool, however, did not provide a rationalized medical opinion on the cause of appellant's disc herniation and therefore his opinion is of little probative value.<sup>10</sup> Moreover, appellant's contention that the Office erred in issuing its December 10, 2001 decision without further developing the evidence is invalid as the burden is on appellant to establish her claim.<sup>11</sup> Appellant has failed to show clear evidence of error and the Office properly denied her request for reconsideration.<sup>12</sup>

The February 14, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
September 11, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>10</sup> *Annie L. Billingsley*, 50 ECAB 210, 213 n.20 (1998).

<sup>11</sup> *See Charles E. Evans*, 48 ECAB 692, 693 (1997).

<sup>12</sup> *See William S. Wright*, 45 ECAB 498, 504 (1994).