

)	
C.G., Appellant)	
)	
and)	Docket No. 08-1434
)	Issued: November 3, 2008
DEPARTMENT OF HOMELAND SECURITY,)	
FEDERAL EMERGENCY MANAGEMENT)	
AGENCY, Lincoln, NE, Employer)	
)	

Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On April 15, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 18, 2008 nonmerit decision denying her request for further review of the merits of her claim. The last merit decision of record was the Office's October 3, 2005 decision denying appellant's claim for an employment-related stroke. Because more than one year has elapsed between the last merit decision and the filing of this appeal the Board lacks jurisdiction to review the merits of this claim.¹

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of her claim on the grounds that her request was untimely filed and failed to demonstrate clear evidence of error.

¹ See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

FACTUAL HISTORY

On December 24, 2004 appellant, then a 42-year-old control specialist, filed an occupational disease claim alleging that she sustained a stroke on September 9, 2004 that was caused by employment-related stress. She first noticed her symptoms when she was working on a hurricane relief project in August 2004.² Appellant indicated that beginning on about August 17, 2004 she realized that it was becoming increasingly difficult for her to speak and write. She spent about four or five hours per day gathering information from field inspectors so that she could produce a report by the end of each workday detailing the progress of the project. Appellant worked 13 to 14 hours a day for several weeks prior to her September 9, 2004 stroke.

Appellant indicated that her control specialist position required her to monitor travel trailers and mobile homes received at and dispatched from staging areas, manage applicants who leased travel trailers and mobile homes, track the progress of site inspectors and gather appropriate data for daily progress reports. She stated that she also had to develop guidance for computer programs, monitor funding for mobile home program operations, maintain a travel trailer and mobile home database, issue work orders to contractors and train staff members.

Appellant submitted the findings of the September 9, 2004 magnetic resonance imaging (MRI) scan of her brain. The findings showed various anomalies including lesions within the left anterior frontal and left frontoparietal regions consistent with acute ischemic infarcts. In an August 24, 2005 letter, the Office requested that appellant submit additional factual and medical evidence in support of her claim. Appellant did not respond.

In an October 3, 2005 decision, the Office denied appellant's claim that she sustained an employment-related stroke. It accepted that appellant established employment factors in the form of her described work duties but found that she did not submit sufficient medical evidence to establish that she sustained an injury due to those employment factors.

In an August 31, 2007 letter, appellant requested reconsideration of the Office's October 3, 2005 decision. She provided further description of her work duties in the weeks leading up to her September 9, 2004 stroke and detailed the progress of her recovery from the stroke.³ Appellant discussed general principles regarding the burden of proof in occupational disease claims and the standards for establishing that an injury occurred in the performance of duty.

In an undated statement, Paula Coffey, a supervisor, described the various difficult tasks that appellant had to perform in connection with the disaster relief projects for Hurricane Charlie and Hurricane Frances in Florida in 2004. She indicated that appellant worked long hours under stressful operational conditions. Ms. Coffey submitted a September 20, 2004 letter in which a hospital official requested feedback on her medical care, an uncompleted hospital inpatient survey form, a November 1, 2005 letter in which she requested reasonable accommodations after

² Appellant reported for the project in Atlanta, GA and soon thereafter she traveled to her main worksite in Orlando, FL.

³ Appellant also submitted another undated statement in which she further described her work duties.

her home in Gulfport, MS was destroyed by a hurricane and a March 27, 2006 letter in which a risk manager from Hampton, VA expressed appreciation for her help.

In an August 15, 2005 form report, Dr. Olga A. Correa, an attending Board-certified internist, stated that appellant sustained a September 9, 2004 cerebrovascular accident of the Broca's area of her brain which affected her speaking and writing. She briefly discussed results of diagnostic testing, checked a box indicating that appellant's condition was caused or aggravated by her employment, and stated, "[Patient] works under severe stress and unfavorable physical conditions caused by weather." Dr. Correa indicated that appellant was totally disabled from September 24, 2004 until an undetermined date.

Appellant submitted a September 8, 2004 x-ray report showing no active heart or lung disease, a September 9, 2004 computerized tomography (CT) scan showing lesions of the left frontal and parietal brain lobes, a September 9, 2004 brain angiography showing various anomalies including relatively high-grade stenosis of the left carotid siphon, laboratory results from March 2004 and bills for medical services provided in September 2004. She submitted a copy of the September 9, 2004 MRI scan report.

In a March 18, 2008 decision, the Office denied appellant's request for review of the merits of her claim on the grounds that her request was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must file her application for review within one year of the date of that decision.⁴ The Board has found that the imposition of the one-year limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a) of the Federal Employees' Compensation Act.⁵

The Office, however, may not deny an application for review solely on the grounds that the application was not timely filed. When an application for review is not timely filed, it must nevertheless undertake a limited review to determine whether the application establishes "clear evidence of error."⁶ Office regulations and procedure provide that the Office will reopen a

⁴ 20 C.F.R. § 10.607(a).

⁵ 5 U.S.C. § 2128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

⁶ *See* 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's application for review shows "clear evidence of error" on the part of the Office.⁷

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.⁸ The evidence must be positive, precise and explicit and must manifest on its face that the Office committed an error.⁹ Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.¹⁰ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹¹ 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.¹² To show clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must be of sufficient probative value to *prima facie* shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of the Office decision.¹³

ANALYSIS

Appellant claimed that she sustained a stroke on September 9, 2004 that was caused by stress from her job duties, including working on a hurricane relief project in the weeks leading up to the stroke. In an October 3, 2005 decision, the Office denied appellant's claim that she sustained an employment-related stroke. It accepted that appellant established employment factors in the form of her described work duties. However, the Office denied the claim on the basis that she did not submit sufficient medical evidence to establish that her stroke was due to those employment factors.

In its March 18, 2008 decision, the Office properly determined that appellant filed an untimely request for reconsideration. Appellant's reconsideration request was filed on August 31, 2007, more than one year after the Office's October 3, 2005 decision, and therefore she must demonstrate clear evidence of error on the part of the Office in issuing this decision.

⁷ 20 C.F.R. § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3d (January 2004). Office procedure further provides, "The term 'clear evidence of error' is intended to represent a difficult standard. The claimant must present evidence which on its face shows that the [Office] made an error (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error." *Id.* at Chapter 2.1602.3c.

⁸ See *Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

⁹ See *Leona N. Travis*, 43 ECAB 227, 240 (1991).

¹⁰ See *Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

¹¹ See *Leona N. Travis*, *supra* note 9.

¹² See *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

¹³ *Leon D. Faidley, Jr.*, *supra* note 5.

Appellant has not demonstrated clear evidence of error on the part of the Office in issuing its October 3, 2005 decision. She did not submit the type of positive, precise and explicit evidence which manifests on its face that the Office committed an error.

In support of her untimely reconsideration request, appellant submitted several statements in which she provided further description of her work duties in the weeks leading up to her September 9, 2004 stroke. She also submitted a statement in which Ms. Coffey, a supervisor, described the various difficult tasks that she had to perform in connection with hurricane relief projects in 2004. These documents are not relevant as the underlying issue of the present case is medical rather than factual in nature, *i.e.*, whether the medical evidence establishes that her September 9, 2004 stroke was related to the accepted employment factors. Appellant submitted various administrative documents relating to her September 2004 hospital stay, bills for medical services provided in September 2004, a request for relief after her home was lost in a hurricane and a letter of appreciation for her federal service. However, these documents are not relevant to the medical issue of the present case.¹⁴

Appellant submitted an August 15, 2005 form report in which Dr. Correa, an attending Board-certified internist, stated that she sustained a September 9, 2004 cerebrovascular accident, checked a box indicating that her condition was caused or aggravated by her employment, and stated, “[Patient] works under severe stress and unfavorable physical conditions caused by weather.” However, this brief report is not the type of evidence that manifests on its face that the Office committed an error in denying appellant’s claim. This report is of limited relevance to the main issue of the present case because Dr. Correa did not describe the implicated work factors in any detail or provide any explanation of why she felt that work stressors contributed to appellant’s stroke.¹⁵ Appellant also submitted the findings of diagnostic testing from September 2004 and laboratory results from March 2004. These documents would not show error in the Office’s October 3, 2005 decision as they contain no opinion on the cause of appellant’s medical condition.

For these reasons, the evidence submitted by appellant does not raise a substantial question concerning the correctness of the Office’s October 3, 2005 decision and the Office properly determined that appellant did not show clear evidence of error in that decision.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant’s case for further review of the merits of her claim on the grounds that her request was untimely filed and failed to demonstrate clear evidence of error.

¹⁴ Appellant discussed general principles regarding the burden of proof in occupational disease claims and the standards for establishing that an injury occurred in the performance of duty, but this general recitation of workers’ compensation principles would not tend to show error in the Office’s October 3, 2005 decision.

¹⁵ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' March 18, 2008 decision is affirmed.

Issued: November 3, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board