

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

FACTUAL HISTORY

Appellant, a 39-year-old stock clerk, sustained injuries to his head and shoulder on April 26, 1978 when he was hit by a door at work. His traumatic injury claim was accepted for a hematoma of the scalp and left shoulder contusion.

This case has been before the Board on prior appeal. By decision dated December 11, 2006, the Board affirmed the Office's August 10, 2005 denial of appellant's May 13, 2004 claim that he had sustained a recurrence of disability in March 1980. The Board found that the medical evidence of record failed to establish that his claimed recurrence was causally related to his April 26, 1978 employment injury.² The facts and the law contained in that decision are incorporated herein by reference. On June 15, 2007 the Board denied appellant's petition for reconsideration, on the grounds that he had failed to establish an error of fact or law. In an order dated April 16, 2008, the Board dismissed appellant's appeal of the December 11, 2006 decision on the grounds that he did not have the right to appeal from the final decision of the Board.³

On May 9, 2008 appellant requested reconsideration before the Office. In support of his request, he submitted copies of medical reports and records previously received and reviewed by the Office. Appellant also submitted a March 9, 2008 letter confirming his request for reconsideration.

In a decision dated July 15, 2008, the Office denied appellant's request for reconsideration on the grounds that it was untimely and failed to establish clear evidence of error.

LEGAL PRECEDENT

The Federal Employees' Compensation Act⁴ provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."⁵

The application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁶

² Docket No. 06-1337 (issued December 11, 2006).

³ Docket No. 06-1337 (issued April 16, 2008).

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ 20 C.F.R. § 10.605.

⁶ *Id.* at § 10.606.

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁷ In implementing the one-year time limitation, the Office's procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues.⁸

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits.⁹ Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁰

Section 10.607(b) provides that the Office will consider an untimely application only if it demonstrates clear evidence of error by the Office in its most recent merit decision. To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office. The evidence must be positive, precise and explicit, and must manifest on its face that the Office committed an error. Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.¹¹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. 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. 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 merit review in the face of such evidence.¹²

ANALYSIS

The Board has duly reviewed the case record and finds that the Office properly determined that appellant's May 9, 2008 request for reconsideration was untimely filed and did not demonstrate clear evidence of error.

The Office properly determined that appellant failed to file a timely application for review. Its procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision.¹³ However a right to

⁷ *Id.* at § 10.607(a).

⁸ *Veletta C. Coleman*, 48 ECAB 367 (1997); *Larry L. Lilton*, 44 ECAB 243 (1992).

⁹ *Donna L. Shahin*, 55 ECAB 192 (2003).

¹⁰ 20 C.F.R. § 10.608.

¹¹ *See Alberta Dukes*, 56 ECAB 247 (2005); *see also Leon J. Modrowski*, 55 ECAB 196 (2004).

¹² *See Alberta Dukes*, *supra* note 11.

¹³ 20 C.F.R. § 10.607(a).

reconsideration within one year also accompanies any subsequent merit decision on the issues.¹⁴ The last merit decision in this case was the Board's December 11, 2006 decision. As appellant's request for reconsideration was submitted more than one year after the most recent merit decision of record, it was untimely. Consequently, he must demonstrate clear evidence of error in the denial of his recurrence claim.¹⁵

In support of his request, appellant submitted copies of medical reports and notes previously received and reviewed by the Office. He also submitted a March 9, 2008 letter confirming his request for reconsideration. As the notes and reports submitted were previously of record, they are not a basis for reopening appellant's claim. The only new evidence submitted was appellant's own statement. Appellant's reiteration of arguments previously presented to the Office and Board, does not constitute clear evidence of error. The Board's December 11, 2006 decision, which affirmed the Office's August 10, 2005 denial of appellant's recurrence claim, turned on the sufficiency of the medical evidence. However, appellant did not submit any new medical evidence in support of his request for reconsideration.

The Board finds that the evidence submitted does not constitute positive, precise and explicit evidence, which manifests on its face that an error was committed, and fails to raise a substantial question as to the correctness of the decision. As the evidence submitted is insufficient to *prima facie* shift the weight of evidence in favor of appellant and raise a substantial question as to the correctness of the last merit decision, he has not established clear evidence of error.¹⁶

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for reconsideration of the merits on the grounds that his request was untimely and failed to demonstrate clear evidence of error.

¹⁴ *Robert F. Stone*, 57 ECAB 292 (2005).

¹⁵ 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

¹⁶ *See Veletta C. Coleman*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 20, 2009
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