

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH J. D'AMICO and PEACE CORPS
Washington, D.C.

*Docket No. 96-265; Submitted on the Record;
Issued April 8, 1998*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly denied appellant's request for reconsideration as it was untimely filed and failed to present clear evidence of error.

By decision dated April 28, 1992, the Office denied appellant's occupational disease claim for a mental illness on the grounds that the claim was untimely filed. Appellant filed a claim on July 24, 1991, alleging that his mental illness started during his tour as a Peace Corps volunteer from June 24, 1964 to September 1, 1966, but that he first became aware of his illness and first realized that the illness was caused or aggravated by his employment on September 1, 1966.

By letter dated July 22, 1992 and received by the Office on July 29, 1992, appellant requested reconsideration. No evidence was submitted with the reconsideration request. By decision dated September 25, 1992, the Office denied appellant's request for reconsideration on the grounds that appellant neither raised substantive legal questions nor included new and relevant evidence, therefore, the request was insufficient to warrant review of the April 28, 1992 decision. By letter dated October 2, 1992, appellant filed an appeal with the Board. By motion dated March 18, 1993, the Director requested that the Board set aside the Office's April 28, 1992 decision and remand the case back to the Office for further development after which a *de novo* decision would be issued on the claim. On April 21, 1993 the Board issued an order granting the Director's motion to remand. On September 8, 1993 the Office denied appellant's claim on the grounds that the claim was untimely filed. By letter dated April 14, 1995, appellant requested reconsideration of the Office's September 10, 1993 decision. By decision dated October 3,

1995, the Office denied appellant's reconsideration request as untimely filed and found that the evidence submitted presented no clear evidence of error on the part of the Office.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).¹ The Office will not review a decision denying or terminating a benefit, unless the application for review is filed within one year of the date of that decision.² When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence that the Office's final merit decision as in error.³

The Board finds that, since more than one year has elapsed from the date of issuance of the Office's September 10, 1993 merit decision, to the date that appellant's request for reconsideration was filed, April 14, 1995, appellant's request for reconsideration was untimely. The Board further finds that the evidence submitted by appellant in support of the request for reconsideration does not raise a substantial question as to the correctness of the Office's September 10, 1993, merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim. In this regard, appellant submitted a discharge summary dated August 26, 1974, by Dr. Richard D. Milone, a March 28, 1983 discharge summary completed by Dr. S. Militano and signed by Dr. R. Calabria; a termination summary dated April 15, 1991, by a doctor whose signature is illegible and July 16, and 18, 1995 letters from appellant. None of the medical evidence submitted was relevant or pertinent to the issue of timeliness of appellant's claim nor did appellant's July 16 and 18, 1995 letters address that issue.

As appellant has not, by the submission of factual and medical evidence, raised a substantial question as to the correctness of the Office's September 10, 1993 decision, he has failed to establish clear evidence of error and the Office did not abuse its discretion in denying a merit review of his claim.

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.138(b)(2); *see also Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

³ *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

The decision of the Office of Workers' Compensation Programs dated October 3, 1995 is affirmed.

Dated, Washington, D.C.
April 8, 1998

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member