

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY U. THOMPSON and TENNESSEE VALLEY AUTHORITY,
BROWNS FERRY, Decatur, AL

*Docket No. 98-158; Submitted on the Record;
Issued September 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

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 February 12, 1996 appellant, then a 46-year-old document control clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she developed carpal tunnel syndrome in her left wrist as a result of her employment. Appellant lost no significant time from work. The employing establishment controverted the claim, noting that appellant returned to work without restrictions.

In response to the Office's March 6, 1996 request for further information, appellant submitted some office notes from Med Plus Clinic dated December 27, 1994, in which the attending physician, whose signature was illegible, questioned whether appellant had carpal tunnel syndrome and further notes from January 3, 1996, which contains a diagnosis of probable carpal tunnel syndrome and possible cervical disc syndrome.

Also submitted was a letter appellant wrote to the Office claims examiner, dated March 19, 1996, wherein she stated that long periods of document retrieval and computer terminal work, among other things, caused her condition.

By decision dated May 2, 1996, the Office denied appellant's claim on the grounds that she did not establish the fact of an injury as a medical condition did not occur, as alleged.

On August 21, 1997 appellant requested reconsideration based on the contention that the injury worsened and that she had continued with medical treatment and had surgery on August 13, 1997 to her right hand. Although appellant mentioned "new evidence," she submitted no new evidence.

By decision dated September 17, 1997, the Office denied appellant's reconsideration request as untimely filed. In further considering the reconsideration request, the Office found that appellant failed to present any clear evidence to show that the previous decision was incorrect.

The Board's jurisdiction to consider and deny appeals from the 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 her appeal with the Board on October 6, 1997, the only decision properly before the Board is the September 17, 1997 Office decision denying appellant's reconsideration request as untimely and failing to present clear evidence of error.

The Board finds that the Office properly determined that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.² The Office, through its regulations, has imposed a one-year time limitation for a request of review to be made following a merit decision of the Office.³ Office procedures state, however, that the Office will reopen a appellant's case for merit review, notwithstanding the one-year filing limitation, if appellant's application for review shows "clear evidence of error" on the part of the Office.⁴

To establish clear evidence of error, appellant must submit evidence relevant to the issue that 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 that 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 To show clear evidence of error, the evidence submitted must not only be of sufficient probative

¹ *Oel Noel Lovell*, 42 ECAB 537, 539 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 20 C.F.R. §§ 501.2(c), 501.3(d)(2); *Darrell W. Garner*, 46 ECAB 318, 320 (1994).

³ 20 C.F.R. § 10.138(b)(2).

⁴ Federal (FECA) Procedure Manual. Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (May 1991).

⁵ *Jeanette Butler*, 47 ECAB 128, 131 (1995).

⁶ *Id.*

⁷ *Mamie L. Morgan*, 47 ECAB 281, 284 (1996).

⁸ *See Leona N. Travis*, 43 ECAB 227, 239 (1991).

⁹ *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

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 appellant and raise a substantial question as to the correctness of the Office decision.¹⁰ The Board makes an independent determination on whether appellant has submitted clear evidence of error on the part of the office such that the Office abused its discretion in denying a merit review in the face of such evidence.¹¹

In the instant case, appellant has failed to submit any evidence; she only submitted a letter from her alleging that her condition worsened and that she had surgery on August 13, 1997 on her left hand. As appellant has not, by the submission of factual and medical evidence, raised a substantial question as to the correctness of the Office's May 2, 1996 decision, she has failed to establish clear evidence of error and the Office did not abuse its discretion in denying a merit review of her claim.¹²

The decision of the Office of Workers' Compensation Programs dated September 17, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 20, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

¹⁰ *Mamie L. Morgan*, *supra* note 7.

¹¹ *Id.*

¹² Accompanying her request for appeal, appellant submitted additional evidence. Evidence may not be reviewed for the first time on appeal that was not before the office at the time it issued the final decision, in this case, September 17, 1997; *see* 20 C.F.R. § 501.2(c).