

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDERICK O. SNYDER and DEPARTMENT OF THE NAVY,
COMMANDING GENERAL MARINE CORPS BASE, Camp Pendleton, CA

*Docket No. 99-169; Submitted on the Record;
Issued May 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
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.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly determined that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

The Office accepted appellant's claim for a temporary aggravation of chronic pulmonary obstructive disease. By decision dated July 12, 1995, the Office denied appellant's claim for continued compensation, stating that his pulmonary condition ceased to be aggravated by factors of his employment after June 30, 1991. The Office determined that appellant had not been exposed to pesticides at his employment since July 1, 1991 when he became a landfill inspector, and therefore the temporary aggravation ceased as of that date.

By letter dated August 7, 1995, appellant requested reconsideration of the Office's decision which was denied on August 23, 1995.

By letter dated May 8, 1996, appellant requested reconsideration of the Office's decision. On May 28, 1996 the Office denied appellant's request for modification.

By letter dated August 11, 1997, appellant requested reconsideration of the Office's decision and submitted abstracts from medical journals addressing the effect of pesticides and hazardous chemicals on the pulmonary function system as well as an article on toxicology.

By decision dated September 15, 1997, the Office denied appellant's reconsideration request, stating that appellant did not present clear evidence that the Office's May 28, 1996 decision was in error.

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 benefits unless the application for review is filed within one year of the date of the decision.² When the 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 was in error.³

The Board finds that, since more than one year has elapsed from the date of issuance of the Office's May 28, 1996 merit decision to the date that appellant's request for reconsideration was filed, August 11, 1997, appellant's request for reconsideration is untimely.⁴ The Board further finds that the evidence submitted by appellant in support of such request does not raise a substantial question as to the correction of the Office's May 28, 1996 merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim.

The evidence appellant submitted to support his request for reconsideration consisting of abstracts from medical journals and an article on toxicology is not probative on the issue of whether appellant's pulmonary condition is causally related to his federal employment. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.⁵ Since appellant has not submitted any probative evidence to support his request for reconsideration, the Board finds that he has failed to raise a substantial question as to the correctness of the Office's May 28, 1996 decision and has failed to establish clear evidence of error on the part of the Office. The Office therefore did not abuse its discretion in denying a merit review of his claim.

The decision of the Office of Workers' Compensation Programs dated September 15, 1997 is hereby affirmed.

Dated, Washington, D.C.
May 11, 2000

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.138(b)(2).

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

⁴ On appeal, appellant contended that the filing of his request for reconsideration was late because he "had a bout with pneumonia and quite a few syncopy episodes" which caused him "great depression." The Board has held, however, that the section 10.138(b)(2) is "unequivocal in setting forth the time limitation period and does not indicate that late filing may be excused by extenuating circumstances." See *Donald Jones-Booker*, 47 ECAB 785, 787-88 (1996); *Charles J. Prudencio*, 41 ECAB 499, 502 (1996). Therefore, appellant's late filing of his reconsideration request may not be excused.

⁵ *George A. Johnson*, 43 ECAB 712, 718 (1992).

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member