

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LINDA F. HENRY and DEPARTMENT OF JUSTICE,  
FEDERAL BUREAU OF PRISONS, Jessup, GA

*Docket No. 99-1644; Submitted on the Record;  
Issued October 23, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's untimely request for reconsideration.

The Board has duly reviewed the record on appeal and finds that the Office properly denied appellant's request.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease or increase the compensation awarded; or

(2) award compensation previously refused or discontinued."<sup>1</sup>

Section 10.607 of the Code of Federal Regulations provides that an application for reconsideration must be sent within one year of the date of the Office decision for which review is sought. The Office will consider an untimely application only if the application demonstrates clear evidence of error on the part of the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.607.

In its February 20, 1996 decision, the Office denied appellant's claim of recurrence on the grounds that the evidence failed to demonstrate a causal relationship between the accepted injury of March 18, 1993 and the claimed condition or disability. The Office noted that appellant was claiming an aggravation of her knee problems while working over a period of time. Because she appeared to be claiming a new injury rather than a spontaneous worsening of her accepted left knee strain, the Office advised appellant to file a Form CA-2 for an occupational disease. In an attached statement of appeal rights, the Office notified appellant that any request for reconsideration must be made within one year of the date of the decision.

On January 29, 1999 appellant requested reconsideration. She stated that she was in great need of medical care for her left knee. She submitted a January 25, 1999 medical report to support her continuing problems:

“[Appellant] has been recently [seen] and treated by us for problems with her knee. She has a fibrotic plica syndrome that historically seems to be related all the way back to March 1993 when she originally injured her knee in a self-defense class. To the best of my knowledge, she has not had any additional etiology to explain her problem. We had recommended her therapy and rehab[ilitation] program and conservative treatment for this with surgery a possibility. We do feel that it does go back to her original injury based on our knowledge of her case.”

In a decision dated April 1, 1999, the Office denied appellant's request for reconsideration on the grounds that it was untimely and failed to present clear evidence of error in the Office's February 20, 1996 decision.

Because appellant filed her January 29, 1999 request for reconsideration more than one year after the Office's February 20, 1996 decision denying her claim of recurrence, the question for determination is whether appellant's request establishes, on its face, that the Office's decision was erroneous.

To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by the Office.<sup>3</sup> The evidence must be positive, precise and explicit and must manifest on its face that the Office committed an error.<sup>4</sup> Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.<sup>5</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>6</sup> 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.<sup>7</sup> To

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<sup>3</sup> See *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>4</sup> See *Leona N. Travis*, 43 ECAB 227 (1991).

<sup>5</sup> See *Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>6</sup> See *Leona N. Travis*, *supra* note 4.

<sup>7</sup> *Nelson T. Thompson*, 43 ECAB 919 (1992).

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.<sup>8</sup> 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 a merit review in the face of such evidence.<sup>9</sup>

Appellant's untimely request for reconsideration does not establish, on its face, that the Office's February 20, 1996 decision was erroneous. The Office denied her claim because the medical evidence failed to establish a causal relationship between the March 3, 1993 employment injury and appellant's claimed condition or disability. The medical report of January 25, 1999 tends to support a causal relationship between her current condition and her accepted employment injury, but it is of diminished probative value because it does not describe what happened on that date and does not relate appellant's medical course, findings or treatment. The report offers little, if any, medical rationale to explain how the incident of March 3, 1993 caused or contributed to her diagnosed fibrotic plica syndrome or how it caused her claimed recurrence of disability.

The Office also denied appellant's claim of recurrence because it appeared that she was not claiming a spontaneous worsening of her accepted injury without contribution from other events or incidents. Rather, it appeared that she was attributing the worsening to additional exposure to aggravating factors. Although the Office advised appellant to file a Form CA-2 for an occupational disease so that it could properly adjudicate her complaint, it does not appear from the record that appellant has filed such a form.

Because appellant's untimely request for reconsideration fails to show, on its face, that the Office's February 20, 1996 decision was erroneous, the Board finds that the Office properly denied her request.

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<sup>8</sup> *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>9</sup> *Gregory Griffin*, 41 ECAB 458, 466 (1990).

The April 1, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
October 23, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member