

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of WILLIAM G. CORDOVA and U.S. POSTAL SERVICE,  
POST OFFICE, Albuquerque, NM

*Docket No. 99-2189; Submitted on the Record;  
Issued October 4, 2000*

---

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,  
VALERIE D. EVANS-HARRELL

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 October 17, 1997, the Office denied appellant's occupational disease claim on the grounds that the evidence failed to demonstrate that appellant's diagnosed condition was causally related to the identified factors of employment to which appellant attributed his condition. Appellant claimed that his low back pain and numbness in his left leg were due to continuous lifting and transferring trays of mail in the employing establishment vehicle and twisting and turning. The employing establishment stated that appellant stopped work on August 8, 1997 which was the last day he was exposed to the conditions alleged to have caused his illness.

By letter dated April 21, 1999 and received by the Office on April 26, 1999, appellant requested reconsideration. The letter was accompanied by a September 17, 1997 report by Dr. Edward I. Feil, who specializes in orthopedic surgery, an October 16, 1997 report by Dr. David Neidhart, who specializes in orthopedic surgery, an October 8, 1997 report of epidural injection given that day and a November 4, 1998 report by Dr. Feil.

By decision dated May 3, 1999, 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).<sup>1</sup> 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.<sup>2</sup> 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 was in error.<sup>3</sup>

The Board finds that, since more than one year has elapsed from the date of issuance of the Office's October 17, 1997 merit decision to the date that appellant's request for reconsideration was filed, April 26, 1999, 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 October 17, 1997 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 September 17, 1997 report by Dr. Feil, an October 16, 1997 report by Dr. Neidhart, an October 8, 1997 report of epidural injection given that day and a November 4, 1998 report by Dr. Feil. Dr. Feil's September 17, 1997 report and Dr. Neidhart's October 8 and 16, 1997 reports failed to address a causal relationship between appellant's diagnosed condition and the factors of employment to which he attributed his condition. Dr. Feil's November 4, 1998 report did provide an opinion that appellant's employment factors precipitated and/or accelerated appellant's recurrent disc protrusion; however, he did not provide this opinion prior to the Office's October 17, 1997 decision.<sup>4</sup>

As appellant has not, by the submission of factual and medical evidence, raised a substantial question as to the correctness of the Office's October 17, 1997 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.

---

<sup>1</sup> 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.606(a); *see also Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

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

<sup>4</sup> FECA (FECA) Procedure Manual, Part 2 -- Claims, *Reconsideration*, Chapter 2.1602.3(c) (May 1991). The Office therein states:

“*Clear Evidence of Error*. The term ‘clear evidence of error’ is intended to represent a difficult standard. The claimant must present evidence which on its face shows that the [Office] made a mistake (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error and would not require a review of the case on the Director's own motion.”

The decision of the Office of Workers' Compensation Programs dated May 3, 1999 is affirmed.

Dated, Washington, DC  
October 4, 2000

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member