

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHARLES L. STACKS and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Fayetteville, AR

*Docket No. 01-624; Submitted on the Record;  
Issued December 20, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's May 17, 2000 request for reconsideration as untimely and failing to demonstrate clear evidence of error.

On October 10, 1977 appellant, then a 48-year-old painter, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that, on October 7, 1974, he first realized his skin rash was due to his federal employment.<sup>1</sup> The Office accepted the claim for contact dermatitis and paid appropriate compensation benefits. The Office placed appellant on the rolls for temporary total disability by letter dated August 18, 1978. On August 4, 1982 appellant returned to a light-duty job with the employing establishment and a loss of wage-earning determination was issued on September 24, 1982.<sup>2</sup> Appellant was again placed on the rolls for temporary total disability effective April 9, 1987.<sup>3</sup>

On April 1, 1999 the Office issued a proposed notice of termination based upon the February 22, 1998 report by Dr. Wendell W. Weed, an attending Board-certified dermatologist, which indicated that appellant was not being treated for any work-related dermatology problems. By decision dated May 3, 1999, the Office finalized the termination of appellant's wage-loss and medical compensation effective May 3, 1999 on the basis that his employment-related injury had resolved.

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<sup>1</sup> This was assigned claim number A07-0166985.

<sup>2</sup> Subsequent to returning to work in a lower-graded position, appellant suffered a back injury which the Office accepted and assigned claim number A16-113417.

<sup>3</sup> Appellant was separated from his federal employment effective April 6, 1987 due to retirement/disability.

Appellant's counsel requested reconsideration of the termination of appellant's wage-loss compensation by letter dated May 17, 2000 and enclosed a February 18, 1992 letter detailing a job offer from the employing establishment.

By decision dated November 1, 2000, the Office denied appellant's request for reconsideration for the reason that it was not timely filed and that appellant had not shown clear evidence of error.

The Board finds that the Office properly determined that appellant's request for reconsideration was untimely filed and did not demonstrate clear evidence of error.

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 previously awarded; or
- (2) award compensation previously refused or discontinued."<sup>4</sup>

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, 20 C.F.R. § 10.607(a) provides that the Office will not review a decision unless the application for review is filed within one year of the date of that decision. As appellant filed his request for reconsideration on May 17, 2000, over one year after the May 3, 1999 decision of the Office, appellant's request for reconsideration was not timely filed.

However, the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation, if the claimant's application for review shows clear evidence of error on the part of the Office in its most recent merit decision.<sup>5</sup> To establish clear evidence of error, claimant must submit evidence relevant to the issue that was decided by the Office. The evidence must be positive, precise and explicit and must be manifested on its face that the Office committed an error.<sup>6</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>7</sup> It is not merely enough to show that the evidence could be construed so as to produce a contrary conclusion.<sup>8</sup> This entails a limited review by the Office of the evidence previously of record and

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<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.607(b).

<sup>6</sup> 20 C.F.R. § 10.607(b); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

<sup>7</sup> *Jimmy L. Day*, 48 ECAB 654 (1997).

<sup>8</sup> *Id.*

whether the new evidence demonstrates clear evidence of error on the part of the Office.<sup>9</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 fact of such evidence.<sup>10</sup>

The evidence submitted by appellant does not establish clear evidence of error because it does not raise a substantial question as to the correctness of the Office's merit decision. Appellant submitted a February 18, 1992 letter from the employing establishment indicating his part-time status and that he would receive compensation for the difference in pay because he was moved to a lower grade. This letter is irrelevant to the issue of whether the Office erred in terminating his compensation effective May 3, 1999 and is repetitious as it is contained in the record. Thus, appellant has failed to submit any evidence establishing clear evidence of error.

As appellant failed to submit clear evidence of error, the Office did not abuse its discretion in denying further review of appellant's case.

The decision of the Office of Workers' Compensation Programs dated November 1, 2000 is affirmed.

Dated, Washington, DC  
December 20, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

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<sup>9</sup> *Id.*

<sup>10</sup> *Thankamma Mathews*, 44 ECAB 775, 770 (1993).