

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAUREEN WALL and U.S. POSTAL SERVICE,
POST OFFICE, Sterling Heights, MI

*Docket No. 00-2810; Submitted on the Record;
Issued July 19, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's May 16, 2000 request for reconsideration on the grounds that it was untimely and failed to demonstrate clear evidence of error.

In the prior appeal of this case,¹ the Board found that the Office properly denied appellant's June 25, 1997 request for reconsideration. As the Board noted, the most recent decision on the merits of appellant's claim was the Office's decision of April 15, 1996. In that decision, the Office found that the weight of the medical evidence established that appellant had no condition or disability after May 31, 1995 that was causally related to her employment injury of August 24, 1987, which the Office had accepted for the conditions of right shoulder strain and acute subacromial bursitis of the right shoulder. The Office found that the weight of the medical evidence rested with the well-reasoned opinion of the impartial medical specialist, whom the Office selected to resolve a conflict between appellant's attending physician and an Office referral physician. The Board found that appellant's June 25, 1997 request for reconsideration was untimely, as she made the request more than one year after the Office's April 15, 1996 merit decision. The Board further found that appellant failed to support her untimely request with clear evidence of error in the Office's April 15, 1996 decision.

On May 17, 2000 appellant again requested reconsideration. In support thereof, she submitted medical evidence to show a diagnosed impingement within a year of her August 24, 1987 employment injury and continuing until she filed her claim of recurrence. She submitted a May 3, 2000 report from Dr. Jeffrey H. DeClaire, a specialist in arthroscopic and reconstructive surgery of the knee. Dr. DeClaire supported that appellant's chronic impingement syndrome with associated rotator cuff tendinitis and early degenerative arthritis of the acromioclavicular joint was causally related to the employment injury sustained on August 24, 1987. Appellant

¹ Docket No. 97-2583 (issued June 1, 1999).

also submitted an October 23, 1987 duty status report, a June 3, 1988 report from Dr. Michael B. Haynes, an orthopedic surgeon, and treatment notes from December 2, 1988 to January 12, 1995.

In a decision dated June 13, 2000, the Office denied a merit review of appellant's claim. The Office found that appellant's May 17, 2000 request for reconsideration was untimely and failed to demonstrate clear evidence of error.

The Board finds that the Office properly denied appellant's May 16, 2000 request for reconsideration.

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.²

As the Board noted in its prior decision, the last merit decision issued by the Office was its April 15, 1996 decision denying appellant's claim of recurrence. The Office subsequently denied appellant's June 25, 1997 request for reconsideration, but that decision, together with the Board's June 1, 1999 review thereof, were not decisions on the merits of appellant's claim of recurrence. Rather, they were decisions on whether the Office should reopen appellant's claim for a merit review of the recurrence issue, given the untimeliness of her request. Appellant had one year from the Office's April 15, 1996 decision to request reconsideration, and just as her June 25, 1997 request for reconsideration was untimely, so too is her May 16, 2000 request for reconsideration untimely.³

To obtain a review of the merits of her claim, therefore, appellant must submit evidence that demonstrates on its face that the Office's April 15, 1996 decision was erroneous. In that decision, the Office found that the weight of the medical evidence, as represented by the opinion of the impartial medical specialist, established that appellant had no condition or disability after May 31, 1995 that was causally related to her employment injury of August 24, 1987. Appellant submitted a May 3, 2000 report from Dr. DeClaire, who stated that appellant's shoulder condition was causally related to the employment injury sustained on August 24, 1987. At best, ignoring any deficiency that might be found in the doctor's reporting of the history of injury or in his medical reasoning, such an opinion can only create a conflict with the opinion given by the impartial medical specialist, leaving unsettled the critical issue of whether appellant sustained a

² 20 C.F.R. § 10.607.

³ The Office's procedure manual explains the one-year time limit for requesting reconsideration begins on the date of the original decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following a reconsideration, any *merit* decision by the Board, and any merit decision following action by the Board, but does not include prerecoupment hearing/revision decisions. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3.b(1) (May 1996).

recurrence as alleged. Such evidence, therefore, does not demonstrate on its face that the denial of appellant's claim of recurrence was erroneous.⁴ The other evidence submitted by appellant predates her claimed recurrence and is therefore immaterial to whether she had a condition or disability after May 31, 1995 that was causally related to her employment injury of August 24, 1987.

Because appellant's May 16, 2000 request for reconsideration is untimely and fails to demonstrate clear evidence of error in the Office's April 15, 1996 decision, the Office properly denied a merit review of her claim.

The June 13, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
July 19, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁴ The Office's procedure manual directly addresses this circumstance: "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 an error (for example, proof of a miscalculation in a schedule award). Evidence such as a detailed, well-rationalized medical report which, if submitted prior to the Office's denial, 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." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (April 1991).