

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOE L. MANSON and U.S. POSTAL SERVICE,  
POST OFFICE, Hartford, CT

*Docket No. 01-700; Submitted on the Record;  
Issued October 3, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

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 present clear evidence of error.

On November 15, 1994 appellant, then a 53-year-old automotive mechanic filed an occupational disease claim alleging that he developed poor right eye vision, traumatic cataract and secondary glaucoma due to a previous traumatic injury sustained while performing work duties under a vehicle on July 30, 1969.

By decision dated July 12, 1995, the Office found that appellant filed a timely claim for compensation; however, denied the claim on the grounds that the evidence fails to establish that appellant's injury was causally related to employment factors. The Office found that although appellant alleged that the condition began on July 30, 1969, the medical evidence submitted in support of his claim indicated that the injury occurred in 1970. Further, the Office found that the medical evidence on file did not support a medical condition resulting from the accepted trauma or exposure.

In a letter dated May 12, 1999, appellant requested a formal hearing based on the July 12, 1995 decision. Appellant asserted that due to his various health problems since 1995 and his inability to understand the required procedures, he had been unable to file a request for a formal hearing during the specified timeframe. He further asserted that the date, time and nature of the accident were originally documented on a CA-1 form and that his supervisor was aware of the accident. Appellant stated, however, that copies of various documents associated with the original injury were lost during a basement flood.

By decision dated October 6, 1999, the Office denied appellant's request for an oral hearing on the grounds that it was untimely filed pursuant to section 8124 of the Federal

Employees' Compensation Act.<sup>1</sup> On October 15, 1999 appellant requested reconsideration. Appellant, however, submitted no supportive evidence with his request.

By decision dated December 13, 1999, the Office denied appellant's request for reconsideration on the grounds that it was untimely and failed to present clear evidence that the Office's July 12, 1995 decision was erroneous.

The Board finds that the Office properly denied appellant's request for reconsideration on the grounds that it was untimely filed and failed to present clear evidence of error.

With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.<sup>2</sup> As appellant filed his appeal on November 2, 2000, the only decision over which the Board has jurisdiction on this appeal is the December 13, 1999 decision denying his 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.<sup>3</sup>

Appellant did not send his October 15, 1999 request for reconsideration within one year of the Office's July 12, 1995 merit decision denying his claim. Since appellant's request for reconsideration was made more than one year after the Office decision, it is untimely.

The Board has held, however, that a claimant has a right under 5 U.S.C. § 8128(a) to secure review of an Office decision upon presentation of new evidence that the decision was erroneous.<sup>4</sup> In accordance with this holding, the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's application for review shows "clear evidence of error" on the part of the Office.<sup>5</sup>

To establish clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by the Office.<sup>6</sup> The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error.<sup>7</sup> Evidence which does not raise

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See 20 C.F.R. § 501.3(d).

<sup>3</sup> 20 C.F.R. § 10.607.

<sup>4</sup> *Leonard E. Redway*, 28 ECAB 242 (1977).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- *Claims, Reconsiderations*, Chapter 2.1602.3(c) (May 1996); see also 20 C.F.R. § 10.607(b).

<sup>6</sup> See *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>7</sup> See *Leona N. Travis*, 43 ECAB 227 (1991).

a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.<sup>8</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>9</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>10</sup>

To 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>11</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 merit review in the face of such evidence.<sup>12</sup>

In this case, the record does not contain any evidence submitted prior to the December 13, 1999 decision containing a well-reasoned medical opinion explaining how specific incidents at work caused or aggravated his claimed condition. In the absence of evidence that is of such probative value that it shifts the weight of the evidence in favor of the claimant and raises a substantial question as to the correctness of the Office decision, the Board finds that the Office properly denied the request for reconsideration in this case.

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<sup>8</sup> See *Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>9</sup> See *Leona N. Travis*, *supra* note 7.

<sup>10</sup> See *Nelson T. Thompson*, 43 ECAB 919 (1992).

<sup>11</sup> *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>12</sup> *Gregory Griffin*, 41 ECAB 458 (1990).

The December 13, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
October 3, 2001

Michael J. Walsh  
Chairman

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member