

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SANDRA ATKINS claiming as widow of EARNEST ATKINS and  
DEPARTMENT OF THE AIR FORCE, TINKER AIR FORCE BASE, OK

*Docket No. 01-479; Submitted on the Record;  
Issued September 13, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's June 8, 2000 request for reconsideration was untimely and failed to show clear evidence of error.

On July 21, 1998 appellant filed a claim for survivor benefits alleging that her husband, a federal employee born on October 5, 1967, suffered work-related stress, which caused a stroke on or about June 13, 1998. Appellant asserted in the claim that her husband died on June 18, 1998 and submitted medical evidence.

In a letter dated November 10, 1998, the Office of Workers' Compensations Programs advised appellant that additional evidence was needed to establish a relationship between her spouse's disease or illness and his federal employment. Appellant did not submit any further evidence to the Office.

By decision dated December 10, 1998, the Office denied appellant's claim on the grounds that it did not meet the guidelines for establishing that her husband's death was in the course of his employment and in the performance of duty, as required by the Federal Employees' Compensation Act.

On June 8, 2000 appellant through counsel requested reconsideration. In support, appellant submitted previously submitted requests for information with release and authorization dated March 27 and April 18, 2000 and medical evidence already of record.

On August 30, 2000 the Office denied appellant's request as untimely and not demonstrating clear evidence of error. The Office found that factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition was never submitted by appellant and, therefore, the evidence did not demonstrate clear evidence of error on the part of the Office at the time of the decision.

The Board finds that the Office in its August 30, 2000 decision properly determined that appellant's request for reconsideration was untimely filed and did not demonstrate clear evidence of error.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> As appellant filed her present appeal with the Board on December 5, 2000, the only decision properly before the Board is the Office's August 30, 2000 decision denying appellant's 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's 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>

Appellant did not send her request for reconsideration within one year of the Office's December 10, 1998 decision denying the claim. The Office received his request on June 8, 2000, clearly outside the one-year time limitation for making such requests. Therefore, appellant's request for reconsideration was untimely.

To establish clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by the Office.<sup>3</sup> The evidence must be positive, precise and explicit and must be manifested on its face that the Office committed an error.<sup>4</sup> Evidence, which 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 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

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<sup>1</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>2</sup> 20 C.F.R. § 10.607.

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

<sup>4</sup> *See Leona N. Travis*, 43 ECAB 0227 (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> *See Nelson T. Thompson*, 43 ECAB 919 (1992).

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

an independent determination of whether a claimant has submitted clear evidence of error by the Office such that the Office abused its discretion in denying merit review in the face of such evidence.<sup>9</sup>

In its August 30, 2000 decision, the Office properly determined that the evidence submitted by appellant on June 8, 2000 did not show clear evidence of error on the part of the Office. The underlying issue in this case is whether the evidence established that the illness and subsequent death arose while in the performance of his federal duties. Following the merit decision, appellant submitted a medical report from Dr. Mitchell Wolf, a Board-certified family practitioner, dated July 1, 1998, who reported that appellant suffered a stroke on June 16, 1998 due to occlusion of the right middle cerebral artery and died on June 18, 1998 of cardiac arrest. He related in his report that appellant began having problems with hypertension in August 1995 and was seen for chest pain; however, cardiac evaluation was unremarkable at that time. Dr. Wolf indicated that appellant had reported that he was under a great deal of stress at work and that appellant noted a clear association between stress on the job and elevation of his blood pressure and chest pain. He reported that appellant specifically noted his stress symptoms on September 29, 1997 when he described his work duties with the employing establishment during an office visit. Dr. Wolf concluded that appellant's main problem was hypertension and stated that, although coronary artery disease was not evident from the work-up, it was reasonable to believe that he had cerebrovascular disease with hypertension as a risk factor. He further concluded that stress was a factor in his blood pressure elevation.

The Office, in the August 30, 2000 decision, found that the evidence submitted duplicative of previously submitted evidence and did not clearly show that the Office's prior decision was in error. The Office further determined that the record was devoid of factual information identifying employment factors or incidents alleged to have caused or contributed to the condition of appellant's spouse. In the report, Dr. Wolf simply indicated that appellant's spouse had complained of stress and related it to work factors, but did not outline specific factors of his employment which might have caused the claimed stress condition. Further, Dr. Wolf discussed appellant's condition of hypertension, cerebrovascular disease and coronary attack and noted that stress was a factor in his high blood elevation; however, he did not provide additional detail or explanation. He further failed to provide a rationalized opinion on causal relationship between the diagnosed condition and his subsequent death and any factors of employment.

As appellant has not, by the submission of factual and medical evidence, raised a substantial question as to the correctness of the Office's December 10, 1998 decision, she has failed to establish clear evidence of error and the Office did not abuse its discretion in denying a merit review of her claim.

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

For the foregoing reasons, the decision of the Office of Workers' Compensation Programs dated August 30, 2000 is affirmed.

Dated, Washington, DC  
September 13, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member