

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DOUGLAS E. WIGGERS and U.S. POSTAL SERVICE,  
POST OFFICE, Champagne, IL

*Docket No. 01-1164; Submitted on the Record;  
Issued January 4, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

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 October 7, 1998 appellant, then a 34-year-old mechanic, filed a claim for occupational disease alleging that his ruptured disc was caused by his employment. Appellant noted that he was initially aware of his condition on July 11, 1998, but became aware that it was caused by his employment on July 27, 1998. The employing establishment noted that appellant was out of work from July 13 to September 8, 1998.

By letter dated November 6, 1998, the Office advised appellant that he needed to submit additional information to process his claim.

By decision dated January 19, 1999, the Office denied appellant's claim on the grounds that the evidence submitted was insufficient to establish that a medical condition had been diagnosed as a result of his employment.

By letter dated February 18, 1999, appellant, through counsel, requested an oral hearing. Appellant testified at his June 14, 1999 hearing, and the hearing representative, in a decision issued and finalized on August 16, 1999, affirmed the Office's January 19, 1999 decision denying benefits.

By letter dated December 15, 1999, appellant, through counsel, requested reconsideration. By decision dated January 28, 2000, the Office denied appellant's request for review of its prior decision.

By letter dated January 8, 2001, appellant again requested reconsideration. By decision dated January 16, 2001, the Office denied appellant's request for review of its August 16, 1999 decision on the grounds that it was untimely filed and failed to establish clear evidence of error.

The Board notes that it only has jurisdiction over those final decisions issued by the Office within one year of appellant's appeal. Since appellant filed his appeal on March 23, 2001, the only decision before the Board in this appeal is the January 16, 2001 Office decision denying appellant's request for reconsideration.<sup>1</sup>

In his request for reconsideration, appellant merely disagreed with the Office's decisions in his case, claiming that his employment caused his medical condition.

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.

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>2</sup>

The Office received appellant's request for reconsideration on January 11, 2001, more than a year from the date of the last merit decision in this claim which was the hearing representative's August 16, 1999 decision. The question, therefore, is whether appellant's request establishes on its face that the Office's August 16, 1999 decision was erroneous. Appellant's reconsideration petition merely disagrees with that decision and thus it failed to establish clear evidence of error. He did not submit a well-reasoned medical opinion explaining how his employment caused or aggravated his diagnosed back condition. The Office noted these same deficiencies in its August 16, 1999 decision. Appellant's untimely request for reconsideration does not cure these deficiencies and fails to establish that the Office's decision was erroneous.

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<sup>1</sup> 20 C.F.R. § 501.3(d)(2).

<sup>2</sup> 20 C.F.R. § 10.607.

The January 16, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
January 4, 2002

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member