

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLYDIE MAE BOWLING and DEPARTMENT OF THE AIR FORCE,
AIR FORCE SYSTEMS COMMAND, EGLIN AIR FORCE BASE, FL

*Docket No. 01-1357; Submitted on the Record;
Issued January 24, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's January 4, 2001 request for reconsideration as untimely and failing to demonstrate clear evidence of error.

On August 17, 1980 appellant, then a 28-year-old cook, filed a notice of traumatic injury and claim for compensation/continuation of pay, alleging that on August 16, 1980 she suffered an acute sprain on the left side of her body from lifting a pan off of the oven. The Office accepted the claim for conditions of back strain with paraspinous muscle spasms and strain of the right shoulder. Appellant was placed on the periodic rolls for compensation due to her total disability. She returned to work on December 29, 1980.

By decision dated November 5, 1990, the Office terminated appellant's claim for further compensation on the basis that the medical evidence established that her disability related to her August 16, 1980 injury had ceased. In a March 18, 1993 decision, an Office hearing representative affirmed the prior decision.

On November 1, 1998 appellant filed a notice of recurrence claiming that her symptoms which had been ongoing since 1992 were causally related to the August 16, 1980 injury. She advised that she had back pain, shoulder and neck pain, cramping in the legs, burning between the shoulders and numbness in her fingers since 1992. By decision dated January 19, 1999, the Office denied appellant's recurrence claim on the basis that the evidence failed to establish that the claimed recurrence on or about 1992 was causally related to the August 16, 1980 work injury.

By letter dated January 4, 2001, appellant requested reconsideration. She asserted that she had a cervical condition, as well as a seizure disorder and emotional condition as part of her original claim. In a subsequent letter dated January 5, 2001, appellant requested that the Office provide her with a notice of recurrence form.

By letter dated January 11, 2001, the Office noted that while they were enclosing a Form CA-2a as appellant had requested, they advised that filing a recurrence (CA-2a form) would be premature unless the prior denial of January 1999 was vacated through the appeal process, such as appellant requesting reconsideration. The Office further provided appellant with the definition of a recurrence and advised that if appellant has any additional work duties which aggravates her condition, she should claim a new occupational disease and complete a Form CA-2 or, if she experienced a new injury, a Form CA-2 notice of traumatic injury should be filed.

On February 3, 2001 appellant filed a recurrence claim. In a letter dated February 16, 2001, the Office advised that a denied claim may not recur. Accordingly, the Office stated that no further action would be taken concerning appellant's claim for recurrence.

By decision dated March 9, 2001, 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.

The only decision before the Board on this appeal is the Office's March 9, 2001 decision, denying appellant's request for reconsideration of its January 19, 1999 decision. Because more than one year has elapsed between the issuance of the Office's January 19, 1999 decision and April 5, 2001, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the January 19, 1999 Office decision.¹

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 awarded; or

(2) award compensation previously refused or discontinued."²

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 her request for reconsideration on January 4, 2001, over one year after the January 19, 1999 decision of the Office, appellant's petition for reconsideration was not timely filed.

¹ See 20 C.F.R. § 501.3(d)(2).

² 5 U.S.C. § 8128(a).

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.³ 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.⁴ Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.⁵ It is not merely enough to show that the evidence could be construed so as to produce a contrary conclusion.⁶ This entails a limited review by the Office of the evidence previously of record and whether the new evidence demonstrates clear evidence of error on the part of the Office.⁷ 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.⁸

In the instant case, appellant did not submit any evidence with her reconsideration request. Although appellant asserted in her January 4, 2001 reconsideration request that she was treated wrongfully by doctors in Arkansas and in Little Rock, Arkansas, she did not provide any details or evidence supporting who the doctors were and what was done wrong. As appellant has not submitted any new evidence nor advanced a legal argument not previously considered by the Office, appellant has failed to show clear evidence of error on the part of the Office in denying her claim.

As appellant's untimely request for reconsideration failed to establish clear evidence of error in the Office's denial of benefits, the Board finds that the Office properly denied the request.

³ 20 C.F.R. § 10.607(b).

⁴ 20 C.F.R. § 10.607(b); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

⁵ *Jimmy L. Day*, 48 ECAB 654 (1997).

⁶ *Id.*

⁷ *Id.*

⁸ *Thankamma Mathews*, 44 ECAB 775, 770 (1993).

The decision of the Office of Workers' Compensation programs dated March 9, 2001 is affirmed.

Dated, Washington, DC
January 24, 2002

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member