

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JUANITA BAUMANN and U.S. POSTAL SERVICE,  
POST OFFICE, Wickliffe, OH

*Docket No. 02-478; Submitted on the Record;  
Issued July 15, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was untimely filed and did not demonstrate clear evidence of error.

The Board has reviewed the case record and finds that the Office properly determined that appellant's request for reconsideration was untimely filed and did not demonstrate clear evidence of error.

On January 31, 1998 appellant, then a 54-year-old letter carrier, filed an occupational disease claim alleging that she sustained a neck and shoulder condition causally related to her employment. The Office accepted appellant's claim for a bilateral rotator cuff tear and remanded the case for further development of appellant's claim for a cervical condition.

By decisions dated February 12 and August 27, 1999, the Office denied appellant's claim for a cervical condition.

By decision dated April 12, 2000 and finalized April 14, 2000, an Office hearing representative affirmed the Office's August 27, 1999 decision.

By letter dated July 19, 2001, received by the Office on August 13, 2001, appellant requested reconsideration. She submitted medical reports that did not explain the causal relationship between her cervical condition and her employment.

By decision dated October 2, 2001, 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 April 14, 2001 was erroneous.<sup>1</sup>

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>2</sup> As appellant filed her appeal with the Board on October 30, 2001, the only decision properly before the Board is the Office's October 2, 2001 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's April 14, 2000 or August 27 or February 12, 1999 decisions finding that appellant's cervical condition was not causally related to her employment.<sup>3</sup>

Section 8128(a) of the Federal Employees' Compensation Act<sup>4</sup> does not entitle a claimant to a review of an Office decision as a matter of right.<sup>5</sup> This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.<sup>6</sup> 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, the Office has stated that it will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.<sup>7</sup> The Board has found that the imposition of this one-year limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).<sup>8</sup>

In this case, appellant filed her request for reconsideration by letter dated July 19, 2001 and received by the Office on August 13, 2001. This was clearly more than one year after the Office's last merit decision was issued on April 14, 2000 and, thus, the application for review was not timely filed.

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<sup>1</sup> The record contains additional evidence which was not before the Office at the time it issued its October 2, 2001 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

<sup>2</sup> 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

<sup>3</sup> *See Leon D. Faidley, Jr.*, 41 ECAB 104, 108-9 (1989).

<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>6</sup> *Jesus D. Sanchez*, *supra* note 5. Compare 5 U.S.C. § 8124(b) which entitles a claimant to a hearing before an Office hearing representative as a matter of right provided that the request for a hearing is made within 30 days of a final Office decision and provided that the request for a hearing is made prior to a request for reconsideration.

<sup>7</sup> 20 C.F.R. § 10.607(a).

<sup>8</sup> *See Gregory Griffin*, *supra* note 5.

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>9</sup>

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.<sup>10</sup> The evidence must be positive, precise and explicit and must be manifested on its face that the Office committed an error.<sup>11</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>12</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>13</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>14</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>15</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>16</sup>

Appellant submitted medical evidence that did not explain the causal relationship between her cervical condition and her employment. This evidence is insufficient to show clear evidence of error. The evidence does not raise a substantial question as to the correctness of the Office's decision because it did not address the subject of the Office's April 14, 2000 decision, the issue of causal relationship between appellant's cervical condition and her employment. As appellant's untimely application for review failed to present clear evidence of error, the Board finds that the Office properly refused to reopen appellant's case for merit review under 5 U.S.C. § 8128(a).

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<sup>9</sup> 20 C.F.R. § 10.607(b).

<sup>10</sup> See *Dean D. Beets*, 43 ECAB 1153, 1158 (1992).

<sup>11</sup> See *Leona N. Travis*, 43 ECAB 227, 240 (1991).

<sup>12</sup> See *Jesus D. Sanchez*, *supra* note 5.

<sup>13</sup> See *Leona N. Travis*, *supra* note 11.

<sup>14</sup> See *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

<sup>15</sup> *Leon D. Faidley, Jr.*, *supra* note 3.

<sup>16</sup> *Gregory Griffin*, *supra* note 5.

The decision of the Office of Workers' Compensation Programs dated October 2, 2001 is affirmed.

Dated, Washington, DC  
July 15, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

Michael E. Groom  
Alternate Member