

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MIKLE W. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, TX

*Docket No. 01-1962; Submitted on the Record;
Issued June 12, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly found that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly determined that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

On April 30, 1996 appellant, then a 42-year-old modified carrier technician, filed a claim for occupational disease, claim number 1602793370, alleging that he developed a left hand condition in the performance of duty. In a decision dated September 16, 1996, the Office denied appellant's claim on the grounds that the medical evidence of record did not establish that appellant's diagnosed left hand condition was causally related to his employment. On May 2, 1996 appellant filed a separate claim for occupational disease, claim number 160279400, alleging that he developed a right knee condition due to his federal employment duties. In a decision dated August 1, 1996, the Office denied appellant's claim on the grounds that the medical evidence of record failed to show any causal relationship between the diagnosed knee condition and his employment. Appellant requested reconsideration by letter dated March 27, 1998 and in a decision dated April 2, 1998, the Office denied appellant's request on the grounds that it was untimely filed and failed to present clear evidence of error. On June 5, 1996 appellant filed another claim for occupational disease, claim number 160280465, alleging that he developed head, neck, shoulder, back and arm pain as a result of his federal employment duties. In a decision dated September 17, 1996, the Office denied appellant's claim on the grounds that the medical evidence of record was insufficient to establish a causal relationship between appellant's diagnosed neck and bilateral hand and arm pain and his federal employment.

By letter dated May 24, 2000, appellant, through his congressman, requested reconsideration of the Office's September 16, August 1 and September 17, 1996 decisions denying his claims for a left hand condition, right knee condition and neck, back and arm conditions. In support of his request, appellant submitted reports dated October 3, 2000,

January 15 and 26, 2001 from his treating physician, Dr. Ronnie D. Shade, a Board-certified orthopedic surgeon.

On September 7, 2000 the Office combined appellant's claims numbered 1602793370, 160279400 and 160280465. In a decision dated July 27, 2001, the Office denied appellant's May 24, 2000 reconsideration request as untimely and found that the evidence submitted presented no clear evidence of error on the part of the Office with respect to its September 16, August 1 and September 17, 1996 decisions. The Office noted, however, that the medical evidence supported a finding that appellant's right knee and low back conditions were consequences of his accepted right foot condition pursuant to case file 160233271 and advised appellant to pursue these conditions as consequential injuries of his accepted right foot claim.¹

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).² The Office will not review a decision denying or terminating benefits unless the application for review is filed within one year of the date of that decision.³ When an application for review is untimely, the Office takes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.⁴

The Board finds that as more than one year had elapsed since the date of issuance of the Office's September 16, August 1 and September 17, 1996 merit decisions to the date that appellant's request for reconsideration was filed, May 24, 2000, appellant's request for reconsideration is untimely with respect to each of these claims. Moreover, the Board further finds that the evidence submitted by appellant in support of his request does not raise a substantial question as to the correctness of the Office's September 16, August 1 and September 17, 1996 merit decisions and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim. In his reports dated January 15 and 26, 2001, Dr. Shade diagnosed cervical strain and right shoulder bursitis or tendinitis and discussed the treatment options, but did not discuss the causal relationship, if any, between these conditions and appellant's employment. In his report dated October 3, 2000, he discussed both appellant's back and right knee conditions, under claim number 160279400 and neck conditions pursuant to claim number 160280465. With respect to appellant's neck, Dr. Shade stated that appellant presented with complaints of neck pain with associated bilateral arm pain, numbness and tingling, which he stated began after performing repetitive lifting, bending and stooping as a modified carrier technician working outside of his limitations. He stated that his initial diagnosis was cervical strain and opined that appellant's condition was aggravated and precipitated by the employment duties described by appellant. While Dr. Shade's opinion represents new evidence of a causal relationship between appellant's cervical conditions and his employment, "[t]he term 'clear evidence of error' is intended to represent a difficult standard. The claimant must present evidence which on its face shows that the Office made a mistake (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized medical

¹ The record before the Board does not contain a final office decision on this issue.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.138(b)(2); *see also Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

⁴ *Thankamma Matthews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error and would not require a review of the case on the Director's own motion."⁵ As appellant has not, by the submission of factual and medical evidence, raised a substantial question as to the correctness of the Office's September 17, 1996 merit decision denying his claim for an employment-related neck condition, he has failed to establish clear evidence of error and the Office did not abuse its discretion in denying a merit review of his claim on July 27, 2001. Similarly, with respect to appellant's claim for a right knee and low back condition, while in his October 3, 2000 opinion, Dr. Shade explained how appellant's low back and right knee conditions had developed as a consequence of the altered gait stemming from his accepted right foot conditions, this evidence is nonetheless insufficient to establish that the Office committed an error with respect to its August 1, 1996 decision.⁶ Furthermore, as appellant did not submit any medical evidence pertaining to his claim for a left hand condition, denied by the Office on September 16, 1996, appellant also failed to establish clear evidence of error with respect to that decision.

As appellant has failed to submit clear evidence of error, the Office did not abuse its discretion in denying further review of the prior decisions.

The decision of the Office of Workers' Compensation Programs dated July 27, 2001 is hereby affirmed.

Dated, Washington, DC
June 12, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(c) (May 1996).

⁶ The Office noted that appellant's right foot claim, #160233271, is active and accepted, but evidence pertaining to claim number #160233271 is not contained in the record before the Board. As the Office has identified a relationship between appellant's foot, knee and low back conditions, it is recommended that the files for the instant case number 16027937013 (master), 160279400 (subsidiary) and 160280465 (subsidiary) be doubled with case file 160233271. FECA Bulletin No. 97-10 (issued February 15, 1997) provides that cases should be doubled when a new injury is reported for an employee who has filed a previous injury claim for the same part of the body