

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM SPEARS and U.S. POSTAL SERVICE,  
BULK MAIL CENTER, Florissant, MO

*Docket No. 02-1052; Submitted on the Record;  
Issued October 18, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the grounds that the request was untimely and failed to show clear evidence of error.

On February 19, 1998 appellant, then a 53-year-old machine distribution clerk, filed an occupational disease claim alleging that he sustained left carpal tunnel syndrome in the performance of duty.

By decision dated October 1, 1998, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that his left carpal tunnel syndrome was causally related to factors of his employment.

By letters dated January 20 and September 7, 2001, appellant requested reconsideration.

By decisions dated April 25 and December 11, 2001, the Office denied appellant's requests for reconsideration on the grounds that they were not timely filed within one year of the October 1, 1998 decision and did not show clear evidence of error.

The Board finds that the Office properly denied appellant's request for reconsideration on the grounds that the request was untimely and failed to show clear evidence of error.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office of Workers' Compensation Programs extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> As appellant filed his appeal with the Board on March 12, 2002 the only decisions properly before the Board are the Office's December 11 and April 25, 2001 decisions denying appellant's request for reconsideration. The Board has no jurisdiction to

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<sup>1</sup> 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

consider the Office's October 1, 1998 decision, denying appellant's claim for left carpal tunnel syndrome.<sup>2</sup>

Section 8128(a) of the Federal Employees' Compensation Act<sup>3</sup> does not entitle a claimant to a review of an Office decision as a matter of right.<sup>4</sup> This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.<sup>5</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>6</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>7</sup>

The Board has held, however, that a claimant has a right under 5 U.S.C. § 8128(a) to secure review of an Office decision upon presentation of new evidence that the decision was erroneous.<sup>8</sup> In accordance with this holding, the Office will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of the Office in its most recent merit decision.

Since more than one year elapsed from the October 1, 1998 merit decision denying appellant's claim for left carpal tunnel syndrome to his January 20 and September 7, 2001 applications for review, his requests for reconsideration were untimely. Therefore, appellant must submit clear evidence of error in the Office's last merit decision dated October 1, 1998.

To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by the Office.<sup>9</sup> The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error.<sup>10</sup> Evidence that does not raise a

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<sup>2</sup> *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> *Gregory Griffin*, 41 ECAB 186 (1989), *pet. for recon. denied*, 41 ECAB 458 (1990); *Leon D. Faidley, Jr.*, *supra* note 2.

<sup>5</sup> *Leon D. Faidley, Jr.*, *supra* note 2. 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>6</sup> 20 C.F.R. § 10.607.

<sup>7</sup> See *Gregory Griffin*, *supra* note 4.

<sup>8</sup> See *Leonard E. Redway*, 28 ECAB 242, 246 (1977).

<sup>9</sup> See *Dean D. Beets*, 43 ECAB 1153, 1158 (1992).

<sup>10</sup> 20 C.F.R. § (10.6079B); *Fidel E. Perez*, 48 ECAB 663, 664-65 (1997); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.<sup>11</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>12</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>13</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>14</sup>

In a statement dated September 25, 2001, appellant alleged that he developed left carpal tunnel syndrome because he had sustained an injury to his right hand and began using his left hand to perform his job, resulting in overuse of his left hand.

In a report dated September 1, 1998, Dr. Richard H. Gelberman, an orthopedic surgeon, stated that appellant had left carpal tunnel syndrome, "presumably due to the decreased ability to use the right upper extremity." In a report dated October 2, 2001, Dr. Michael J. Spezia, an osteopath, stated his opinion that appellant's left carpal tunnel syndrome was causally related to his employment. However, as noted above, it is not sufficient to merely show that the evidence could be construed so as to produce a contrary conclusion. Later medical evidence independently supporting causal relationship such as that submitted with appellant's requests for reconsideration, has no bearing on the probative value of the medical evidence that was before the Office at the time of its October 1, 1998 merit decision.

Appellant also submitted medical evidence that did not contain a physician's opinion that his left carpal tunnel syndrome was causally related to his employment. Thus, this evidence does not show clear evidence of error in the Office's October 1, 1998 merit decision denying his claim for left carpal tunnel syndrome.

Appellant also submitted medical evidence regarding his right hand. As this case involved his claim for a left hand condition, this evidence is not sufficient to show clear evidence of error in the Office's October 1, 1998 merit decision denying his claim for left carpal tunnel syndrome.

The evidence submitted by appellant does not establish that the Office's October 1, 1998 decision was erroneous. The evidence submitted by appellant did not raise a substantial question as to the correctness of the Office's October 1, 1998 decision and the Office did not abuse its discretion in denying his requests for reconsideration.

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<sup>11</sup> See *Jimmy L. Day*, 48 ECAB 654, 656; *Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

<sup>12</sup> See *Leona N. Travis*, *supra* note 10.

<sup>13</sup> *Leon D. Faidley, Jr.*, *supra* note 2.

<sup>14</sup> See *Thankamma Mathews*, 44 ECAB 765, 770 (1993); *Gregory Griffin*, *supra* note 4.

The December 11 and April 25, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
October 18, 2002

Alec J. Koromilas  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member