

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JERALD M. STERN and U.S. POSTAL SERVICE,  
POST OFFICE, New York, NY

*Docket No. 03-1171; Submitted on the Record;  
Issued July 17, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

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 demonstrate clear evidence of error.

On June 3, 1996 appellant, then a 46-year-old mail carrier, filed a traumatic injury claim alleging that on June 3, 1996 he was loading and unloading a mail truck when the driver of the truck slipped and fell and he tried to break the driver's fall. He indicated that the driver's keys stuck in his hand and the driver's weight "jammed" his left wrist. The Office accepted the claim for laceration of the left wrist. Appellant filed a claim for a schedule award on July 15, 1998 and submitted a report from an attending physician Board-certified orthopedic surgeon, S. Leonard Edelstein, indicating: "25 percent loss of function to left hand." Dr. J. Mervyn Lloyd, a Board-certified orthopedic surgeon who served as an Office referral physician, examined appellant and stated, in pertinent part: "I do not find any scheduled loss of use as a result of this injury." To resolve the conflict in medical opinion between Drs. Edelstein and Lloyd, the Office referred appellant to an independent medical specialist. Dr. Hubert S. Pearlman, a Board-certified orthopedic surgeon, stated that there was "no fracture" to appellant's left wrist and "no findings" based upon a physical examination and his medical history. The Office medical adviser indicated that there was "no evidence" of any fracture and that appellant had "full wrist function."

By decision dated February 23, 2000, the Office denied appellant's claim for a schedule award on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Pearlman, indicated that his left wrist laceration was not severe enough to be considered ratable under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>1</sup> Appellant disagreed with the Office's decision and requested an oral hearing.<sup>2</sup> By

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<sup>1</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993).

<sup>2</sup> The oral hearing was held on July 26, 2000.

decision dated September 11, 2000 and finalized September 18, 2000, the Office hearing representative affirmed the previous decision.

By letter dated January 27, 2003, appellant requested reconsideration claiming that the Office's decision was "unfair" and was based on "undue biased opinions by supposedly impartial arbitrators that were hired by the Department of Labor." He claimed that two different physicians and the hearing representative were unprofessional and visibly annoyed and treated him like an inconvenience. He stated that Dr. Pearlman called him a "phony" and a "big faker" and told him that he had "no business" being there when there was nothing wrong with his hand. Appellant also alleged that his attending physician's opinion did not carry any weight in rendering the Office's final decision. In support of his request he submitted a copy of the hearing representative's decision. By decision dated February 25, 2003, the Office denied appellant's request for reconsideration on the grounds that his request was untimely and did not demonstrate clear evidence of error.

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>3</sup> As appellant filed his appeal with the Board on April 7, 2003, the only decision properly before the Board is the February 25, 2003 Office decision denying appellant's request for reconsideration.

The Board has duly reviewed the case record and concludes that the Office properly determined that appellant's January 27, 2003 request for reconsideration was untimely filed and did not demonstrate clear evidence of error.

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>4</sup> 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.<sup>5</sup> Appellant's letter dated January 27, 2003 was filed more than one year after the date of the last merit decision issued on September 11, 2000, and therefore his request for reconsideration was untimely. The Office will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error by the Office in its most recent merit decision.

To show clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by the Office.<sup>6</sup> The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error.<sup>7</sup> Evidence which does not raise substantial questions concerning the correctness of the Office's decision is insufficient to

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<sup>3</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.607(a); *see also Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

<sup>6</sup> *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>7</sup> *Leona N. Travis*, 43 ECAB 227 (1991).

establish clear evidence of error.<sup>8</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>9</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. The application must establish, on its face, that such decision was erroneous.<sup>10</sup>

In support of his January 27, 2003 request for reconsideration, appellant submitted a copy of the Office hearing representative's September 11, 2000 decision. This evidence was previously of record and is not a basis for reopening appellant's claim. Appellant alleged that the physicians in his case were unprofessional and biased and that the Office's decisions were rendered unfairly. Appellant previously raised these arguments at the oral hearing held on July 26, 2000. The Board held in *Veletta C. Coleman*<sup>11</sup> that appellant's own allegations in support of her request for reconsideration, which reiterated arguments she had previously presented to the Office and Board, did not constitute the necessary clear evidence of error. In *Thankamma Mathews*,<sup>12</sup> the Board held that appellant's own allegations that she was disabled were insufficient to raise a substantial question as to the correctness of the Office's decision. The Board also finds in this case that appellant's own allegations that the Office's decisions were rendered unfairly, without any substantive and supporting evidence do not establish the necessary clear evidence of error.

As appellant's request for reconsideration was untimely filed and failed to establish clear evidence of error, the Office properly denied his request.

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<sup>8</sup> *Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>9</sup> *Leona N. Travis*, *supra* note 7.

<sup>10</sup> 20 C.F.R. § 10.607(b); *see Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, *supra* note 8.

<sup>11</sup> *Veletta C. Coleman*, 48 ECAB 367 (1997).

<sup>12</sup> *Thankamma Mathews*, *supra* note 10.

The February 25, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
July 17, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member