

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of NATHAN FLUELLEN and DEPARTMENT OF THE AIR FORCE,  
ROBINS AIR FORCE BASE, Robins, GA

*Docket No. 03-1188; Submitted on the Record;  
Issued July 2, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, 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.

On August 22, 2000 appellant, then a 60-year-old mechanic and technician, filed a notice of occupational disease and claim for compensation (Form CA-2). When asked to describe the nature of disease or illness, he responded "asbestosis exposure." He indicated that he was exposed to asbestos insulation while painting as part of his federal employment. Appellant did not stop work.<sup>1</sup>

By decision dated December 15, 2000, the Office denied appellant's claim as it found that he had not met the requirements for establishing that he sustained an injury as alleged. The Office found that the evidence was insufficient to establish that appellant experienced the claimed employment factor at the time, place and in the manner alleged.

By letter dated August 14, 2002, appellant requested reconsideration. Although a significant amount of medical reports have been submitted since the denial of appellant's claim, he submitted no new evidence with his request for reconsideration.

By decision dated November 25, 2002, the Office denied reconsideration for the reason that appellant did not timely file a request for reconsideration and did not establish clear evidence of error.

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

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<sup>1</sup> An August 22, 2000 chest x-ray was reported appellant's lungs were clear with no significant abnormalities. On October 3, 2000 Dr. Laura A. Torres-Reys, Chief of Occupational Medicine Medical Group reported there was no documentation of asbestos exposure.

The Board's jurisdiction to consider and decide appeals from a final decision 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 the appeal with the Board on April 1, 2003 the only decision before the Board is the November 25, 2002 decision denying appellant's petition for reconsideration.

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>3</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>4</sup> Appellant's letter dated August 14, 2002 was filed more than one year after the date of the last merit decision issued on December 15, 2000 and, therefore, his request for reconsideration is 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 decision.

To show clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by the Office.<sup>5</sup> The evidence must be positive, precise and explicit and must be manifest on its fact that the Office committed an error.<sup>6</sup> Evidence, which does not raise substantial questions concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.<sup>7</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>8</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>9</sup> The application must establish, on its face, that such decision was erroneous.<sup>10</sup>

In the instant case, appellant's claim was denied for the reason that he did not submit evidence sufficient to establish that he experienced the claimed employment factor at the time, place and in the manner alleged. Since that decision, appellant has only submitted medical evidence. He has submitted no new evidence with regard to the issue of whether he actually experienced the claimed event, the reason that his claim was denied. Accordingly, appellant has

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

<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</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>5</sup> *Willie J. Hamilton*, 52 ECAB \_\_\_ (Docket No. 00-1468, issued June 5, 2001); *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>6</sup> *Id.*; *Leona N. Travis*, 43 ECAB 227 (1991).

<sup>7</sup> *See Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>8</sup> *Leona N. Travis*, *supra* note 6.

<sup>9</sup> *Willie J. Hamilton*, *supra* note 5.

<sup>10</sup> 20 C.F.R. § 10.607(b); *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, *supra* note 7.

failed to show clear evidence of error and the Office properly denied his request for reconsideration.

The November 25, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
July 2, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member