

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERNARD IVORY and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Rockville, OH

*Docket No. 02-2321; Submitted on the Record;
Issued June 26, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On October 19, 2002 appellant, then a 46-year-old supply technician, filed a claim for a traumatic injury, alleging that he sustained back pain from lifting and pushing on September 8, 2000.¹

By decision dated January 10, 2001, the Office denied the claim, finding that the evidence was not sufficient to establish that the injury on September 8, 2000 was caused by the employment factor.

By letter dated June 29, 2002, appellant requested reconsideration of the Office's decision and submitted a magnetic resonance imaging scan of the lumbar spine dated November 12, 2000 which was essentially normal. In his request, appellant explained that he and his coworkers used a motorized car to deliver supplies to the wards. He stated that the cart "would always break down" and he would have to push the supplies by hand using a flatbed which caused injury to his back. Appellant stated that, each time the car broke down, he "would experience pain," and when he described the problem to management, they said "we're working on it" or they were trying to purchase a new cart through a cart committee. He stated that the problem with the cart and his back continued until he was reassigned to work a light-duty assignment. Appellant stated that he did not have any back problem prior to his employment.

¹ Appellant filed two other claims, one for a recurrence of a back injury sustained on April 18, 2000, No. 090467399, which the Office accepted, and one for a back injury sustained on October 30, 2000, No. 092004445, which was under further development. This case does not concern the April 18 or October 30, 2000 claims as there were no final decisions issued on them.

By decision dated July 29, 2002, the Office denied appellant's request for reconsideration, stating that appellant's June 29, 2002 letter requesting reconsideration which was filed more than a year after the last merit decision on January 10, 2001 was untimely, and that appellant failed to show clear evidence of error.

The Board finds that the Office properly found that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

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.² As appellant filed the appeal with the Board on September 19, 2002, the only decision before the Board is the Office's July 29, 2002 decision, denying appellant's request for reconsideration.

To show clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by the Office.³ The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error.⁴ Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.⁵ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.⁶ 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.⁷

In this case, neither appellant's statements in his reconsideration request nor the November 12, 2000 magnetic resonance imaging scan showed that the Office committed error in its January 10, 2001 decision. They are not relevant to the issue of whether appellant sustained a traumatic injury to his back on September 8, 2000 as they do not provide a rationalized medical opinion addressing causation.⁸ The new evidence appellant submitted does not raise a substantial question as to the correctness of the Office's January 10, 2001 decision and therefore appellant has failed to demonstrate clear evidence of error.

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

³ *Dean D. Beets*, 43 ECAB 1153 (1992); *Willie J. Hamilton*, Docket No. 00-1468 (issued June 5, 2001).

⁴ *Willie J. Hamilton*, *supra* note 3; *Leona N. Travis*, 43 ECAB 227 (1991).

⁵ *See Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁶ *Leona N. Travis*, *supra* note 4.

⁷ *Willie J. Hamilton*, *supra* note 3.

⁸ *See Gloria J. McPherson*, 51 ECAB 441, 446 (2000).

The July 29, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 26, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member