

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM E. INGRAHAM and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 03-1093; Submitted on the Record;
Issued June 27, 2003*

DECISION and ORDER

Before DAVID S. GERSON, 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 it was untimely filed and failed to demonstrate clear evidence of error.

On January 3, 1989 appellant, then a 61-year-old retired welder,¹ filed an occupational disease claim alleging that he sustained pulmonary asbestosis in the performance of duty. Appellant explained that he realized that his condition was caused by his employment, "based upon exposure." Appellant submitted the results of radiographic chest studies performed from August 1980 to July 1983, which indicated "normal" and "mild bilateral pleural thickening." An x-ray report dated December 1988 indicated: "no convincing evidence of pulmonary parenchymal fibrosis or pleural disease." On August 10, 1989 an Office medical adviser reviewed the case and stated that there was no evidence of record that appellant sustained an employment-related condition. By decision dated November 12, 1989, the Office denied appellant's claim on the grounds that the medical evidence did not establish that he sustained an injury while in the performance of duty.²

By letter dated December 17, 2002, appellant requested reconsideration on the grounds that he had been informed that he had asbestosis. By decision dated February 7, 2003, the Office found that appellant's request for reconsideration was untimely and that the evidence submitted did not establish 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.³ As

¹ Appellant retired in August 1983.

² The Office also found that the issue of whether the claim was timely filed was moot as appellant submitted no evidence of injury.

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

appellant filed his appeal with the Board on March 24, 2003, the only decision properly before the Board is the Office's February 7, 2003 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 December 17, 2002 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).⁴ 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.⁵ Appellant's letter dated December 17, 2002 was filed more than one year after the date of the last merit decision issued on November 12, 1989, 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.⁶ The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error.⁷ Evidence which does not raise substantial questions concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.⁸ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.⁹ 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.¹⁰ The application must establish, on its face, that such decision was erroneous.¹¹

In this case, appellant did not submit any new evidence, nor did he specify any erroneous application of law or advance a point of law or fact not previously considered by the Office. He only stated, in his letter, that he had been informed that he had asbestosis. In *Veletta C. Coleman*,¹² the Board held that appellant's own statements in support of her request for

⁴ 5 U.S.C. § 8128(a).

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

⁶ *Willie J. Hamilton*, 52 ECAB 110 (2001); *Dean D. Beets*, 43 ECAB 1153 (1992).

⁷ *Willie J. Hamilton*, *supra* note 6; *Leona N. Travis*, 43 ECAB 227 (1991).

⁸ *Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁹ *Leona N. Travis*, *supra* note 7.

¹⁰ *Willie J. Hamilton*, *supra* note 6.

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

¹² *Veletta C. Coleman*, 48 ECAB 367 (1997).

reconsideration, without any new and probative evidence, did not establish clear evidence of error regarding the denial of her claim. The Board also finds in this case that appellant's own statement that he had asbestosis does not establish clear evidence of error. Appellant did not submit any medical evidence which raised a substantial question as to the correctness of the Office's November 12, 1989 decision denying his claim for pulmonary asbestosis, nor did he specify any erroneous application of law. As such, he did not demonstrate clear evidence of error.¹³

Accordingly, the February 7, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 27, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ In the February 7, 2003 decision, the Office noted that appellant could file a claim Form CA-2 if he had obtained current medical evidence supporting a diagnosis of asbestosis. On appeal appellant has submitted a copy of a CA-2 form dated September 16, 2002 and additional medical evidence. These materials do not appear in the case record and are not subject to review on this appeal. 20 C.F.R. § 501.2(c).