

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA J. REEVES and DEPARTMENT OF COMMERCE,
BUREAU OF CENSUS, Dallas, TX

*Docket No. 02-1204; Submitted on the Record;
Issued May 13, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128 on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

This case has been before the Board on two previous occasions. By decisions dated February 27, 1997¹ and September 8, 2000,² the Board found that appellant's claim for an emotional condition was barred by the applicable time limitation provisions of the Federal Employees' Compensation Act. The law and the facts as set forth in the previous decisions are incorporated herein by reference.

Subsequent to the September 8, 2000 decision of the Board, on January 23, 2002 appellant requested reconsideration by the Office and submitted additional evidence. By decision dated March 6, 2002, the Office denied appellant's request on the grounds that it had not been filed within one year of the September 8, 2000 Board decision and did not show clear evidence of error. The instant appeal follows.³

The Board finds that the Office did not abuse its discretion in failing to reopen appellant's case for merit review.

The only decision before the Board is the March 6, 2002 decision in which the Office denied appellant's request for reconsideration of the September 8, 2000 decision. The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under

¹ Docket No. 96-949. The Board also found that the Office properly denied appellant's request for a hearing as untimely.

² Docket No. 99-618.

³ The Board notes that oral argument, scheduled on March 20, 2003, was cancelled at appellant's request.

section 8128(a) of the Act.⁴ The Office 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.⁵ When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.⁶

The Board finds that as more than one year had elapsed from the date of issuance of the September 8, 2000 decision and appellant's request for reconsideration dated January 23, 2002, her request for reconsideration was untimely. The Board further finds that the evidence submitted by appellant in support of this request is insufficient to establish clear evidence of error.

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

With her request for reconsideration appellant submitted a copy of her driver's license and copies of court documents.⁸ The Board find, however, that these are irrelevant to the issue in the instant appeal, *i.e.*, whether her claim for an emotional condition was barred by the applicable time limitation provisions of the Act. This evidence is thus of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant or to raise a substantial question as to the correctness of the prior decisions. Therefore, appellant failed to establish clear evidence of error and the Office properly denied a merit review of her claim.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 20 C.F.R. § 10.607(b) (1999); *see Gladys Mercado*, 52 ECAB ____ (Docket No. 00-898, issued February 12, 2001).

⁶ *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁷ *Nancy Marcano*, 50 ECAB 110 (1998).

⁸ These included a decision of the U.S. District Court for the Eastern District of Louisiana in which a case filed by appellant with the Equal Employment Opportunity Commission was dismissed as untimely, application for writs with the Supreme Court of Louisiana, a court document indicating that appellant had been discharged from probation and an illegible court document.

The decision of the Office of Workers' Compensation Programs dated March 6, 2002 is hereby affirmed.

Dated, Washington, DC
May 13, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member