

FACTUAL HISTORY

On November 18, 1992 appellant, then a 29-year-old air traffic controller, was involved in an employment-related motor vehicle accident. After initially denying appellant's claim, in a decision dated April 8, 1993, the Office accepted the claim for cervical strain, multiple contusions, dislocation and lumbar strain. On August 15, 1997 appellant filed a CA-2a, notice of recurrence of disability. Appellant alleged that he experienced a recurrence of neck and back pain causally related to his accepted work-related injury. The Office accepted appellant's recurrence of disability.

Appellant requested ongoing chiropractic treatment for his work-related injury. After initially denying appellant's request, in a decision dated April 7, 1999, the Office accepted appellant's claim for continuing chiropractic treatment after October 5, 1998.

On November 21, 2000 the Office issued a notice of proposed termination of compensation on the grounds that the May 30, 2000 report of Dr. Michael D. Slomka, a Board-certified orthopedist and Office referral physician, found no continuing disability as a result of appellant's employment injury.¹ In a decision dated December 22, 2000, the Office terminated appellant's benefits effective the same date on the grounds that Dr. Slomka's report represented the weight of the medical evidence and established that appellant had no continuing disability resulting from his employment injury.

In a letter dated January 4, 2001, appellant requested an oral hearing before an Office hearing representative. The hearing was held on June 28, 2001. By decision dated September 10, 2001, the hearing representative affirmed the Office decision dated December 22, 2000.

On August 5, 2002 appellant requested reconsideration and submitted a February 13, 2002 report from Dr. Jan L. Jordan, an employing establishment physician. In a decision dated September 9, 2002, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and insufficient to warrant reopening of appellant's claim.

In a letter dated September 12, 2002, appellant inquired as to what information was required to reopen his case. On September 20 and 23, 2002 the Office informed appellant that in order to have his case considered further he must exercise his appeal rights which were attached to the Office decision.

By letter dated October 2, 2003 and received on October 7, 2003, appellant requested reconsideration of the Office decision. Appellant submitted a report from Dr. Rodolfo Gari, an anesthesiologist, who noted treating appellant since October 30, 2001 for injuries to his neck and low back sustained in a work-related automobile accident. He diagnosed cervicgia,

¹ In a report dated May 30, 2000, Dr. Slomka noted a history of appellant's injury and concluded that appellant's work-related condition had resolved and that there was no permanent impairment for which ongoing treatment was needed.

radiculopathy to the upper extremities, low back pain syndrome, and radiculopathy to the lower extremities and opined that appellant should continue in treatment.

By decision dated December 1, 2003, the Office denied appellant's application for reconsideration on the grounds that the request was not timely and appellant did not present clear evidence of error by the Office.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act does not entitle a claimant to a review of an Office decision as a matter of right.² This section vests the Office with discretionary authority to determine whether it will review an award for or against payment of compensation.³ The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁴ One such limitation is that the application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁵ In those instances when a request for reconsideration is not timely filed, the Office will undertake a limited review to determine whether the application presents "clear evidence of error" on the part of the Office.⁶ In this regard, the Office will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.⁷

To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by the Office.⁸ The evidence must be positive, precise and explicit, and it must be apparent on its face that the Office committed an error.⁹ Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.¹⁰ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹¹ 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

² 5 U.S.C. § 8128(a); see *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³ Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.607 (1999).

⁵ 20 C.F.R. § 10.607(a) (1999).

⁶ 20 C.F.R. § 10.607(b) (1999).

⁷ See *Nelson T. Thompson*, 43 ECAB 919 (1992).

⁸ See *Dean D. Beets*, 43 ECAB 1153 (1992).

⁹ See *Leona N. Travis*, 43 ECAB 227 (1991).

¹⁰ See *Jesus D. Sanchez*, 41 ECAB 964 (1990).

¹¹ See *Leona N. Travis*, *supra* note 9.

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.¹²

ANALYSIS

The one-year time limitation begins the day the Office issued its September 10, 2001 decision, as this was the last merit decision in the case.¹³ Appellant's request for reconsideration was dated October 2, 2003; therefore, he is not entitled to review of his claim as a matter of right. Because appellant filed his request more than one year after the Office's September 10, 2001 merit decision, he must demonstrate "clear evidence of error" on the part of the Office in terminating compensation.

The Board has reviewed evidence submitted with appellant's most recent reconsideration request and concludes that appellant has not established clear evidence of error in this case. The report from Dr. Gari dated December 17, 2002, noted treating appellant since October 30, 2001 for injuries to his neck and low back sustained in a work-related automobile accident. He diagnosed cervicalgia, radiculopathy to the upper extremities, low back pain syndrome, and radiculopathy to the lower extremities and opined that appellant should continue in treatment. However, the records do not provide a rationalized opinion supporting causal relationship of the diagnosed conditions of cervicalgia, radiculopathy to the upper extremities, low back pain syndrome, and radiculopathy to the accepted employment injury. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹⁴ Thus, it cannot be said that this report raises a substantial question as to the correctness of the Office's prior decisions. The Board therefore finds that the Office properly denied appellant's reconsideration request.

CONCLUSION

The Board therefore finds that the Office properly determined that appellant's request for reconsideration dated October 2, 2003 was untimely filed and did not demonstrate clear evidence of error.

¹² *Thankamma Mathews*, 44 ECAB 765, 770 (1993).

¹³ *See Veletta C. Coleman*, 48 ECAB 367, 369 (1997).

¹⁴ *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member