

FACTUAL HISTORY

On January 22, 1996 appellant, then a 44-year-old office manager, filed a traumatic injury claim alleging that at 12:00 noon on January 19, 1996 she slipped and fell on the ice outside the Broad Street foyer and broke her right wrist. By decision dated May 10, 1996, the Office denied the claim for compensation on the basis that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty. The Office noted that at the time of the accident, appellant was on her way to a curbside or outside mailbox, which was not on the employing establishment's premises, to drop off official correspondence before going to lunch. The Office found that there was a mailbox on the premises with only one pick-up in the morning and that, although the outside mailbox had a second postal pick-up, appellant was not ordered or instructed by her supervisors to place the mail in the outside mailbox.

On May 17, 1996 appellant requested reconsideration of the Office's May 10, 1996 decision. By decision dated August 16, 1996, the Office denied modification of its May 10, 1996 decision. Appellant requested reconsideration on October 25, 1996 and, by decision dated December 31, 1996, the Office denied modification of its August 16, 1996 decision. Appellant thereafter filed a request for review before the Board. In a July 7, 1997 order dismissing appeal, the Board granted appellant's request to withdraw her appeal.¹

In letters dated December 4, 1997 and April 9, 1998, appellant, through her counsel, requested reconsideration of the Office's December 31, 1996 decision. By decision dated May 28, 1998, the Office denied modification of its December 31, 1996 decision.

In a July 15, 1998 letter, appellant's counsel filed an appeal before the Board of the Office's May 28, 1998 decision. In a May 25, 2000 order dismissing appeal, the Board dismissed appellant's appeal for lack of proper authorization.²

By letter dated May 24, 2002, appellant's counsel requested reconsideration and argued that the evidence he submitted demonstrated that "the actions appellant took on January 19, 1996 were unanimously considered completely within her scope of responsibilities as a dedicated employee of the Social Security Administration. [Appellant] was officially on the [a]gency's work-time, accomplishing a work-related duty, when the accident occurred. She had taken no steps to proceed with a lunch break or any off-duty activity at the time of the accident." A copy of a September 23, 1997 statement, previously of record, by Michael J. Davenport, Hearing Office Chief Administrative Law Judge, which contained an October 14, 1997 concurrence by Margie Cargile, Acting Regional Management Officer, was submitted.³ The statement advised that the depositing of the mail in the outside mailbox for a Friday evening pickup was a legitimate function of appellant's position and not a convenience. It further stated that although appellant was not directly ordered to perform this mail function, it was completely within her

¹ Docket No. 97-1586 (issued July 7, 1997).

² Docket No. 98-2294 (issued May 25, 2000).

³ Although appellant's attorney notes that statements from John Bobb, Hearing Office Director and Gloria Bozeman, Regional Management Officer, were attached to his reconsideration request, the evidence of record does not contain such evidence.

duties and expected of her to take such action in order to ensure that the Agency's mission was fully and expeditiously accomplished.

By decision dated October 2, 2003, the Office denied further review of the claim on the grounds that appellant's reconsideration request was untimely filed and did not establish clear evidence of error.

LEGAL PRECEDENT

The Office, through regulation, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of the Federal Employees' Compensation 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 Office procedures state that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the claimant's application for review shows "clear evidence of error" on the part of the Office.⁷ 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.⁸

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 be 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

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 20 C.F.R. § 10.607 (1999); *see also Alan G. Williams*, 52 ECAB 180 (2000).

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

⁷ *See Gladys Mercado*, 52 ECAB 255 (2001). Section 10.607(b) provides: "[The Office] will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of [it] in its most recent merit decision. The application must establish, on its face, that such decision was erroneous." 20 C.F.R. § 10.607(b) (1999).

⁸ *See Nelson T. Thompson*, 43 ECAB 919 (1992).

part of the Office such that the Office abused its discretion in denying merit review in the face of such evidence.⁹

ANALYSIS

The Office properly determined in this case that appellant failed to file a timely application for review. In implementing the one-year time limitation, the Office's procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues.¹⁰ The last merit decision in this case was the Office's May 28, 1998 decision denying modification. As appellant's May 24, 2002 letter requesting reconsideration was submitted more than one year after the last merit decision of record, the Office's May 28, 1998 decision, it was untimely.

As appellant's request was filed more than one year after the Office's May 28, 1998 decision, appellant must demonstrate "clear evidence of error" on the issue which was decided by the Office. In support of her request for reconsideration, appellant's attorney argued that the statement from Judge Davenport and Ms. Cargile supported appellant's actions on January 19, 1996 as the placement of mail in the receptacle was a duty assignment expected of her to ensure timely accomplishment of the employing establishment mission. The Office, in its May 28, 1998 decision, had reviewed the September 23, 1997 statement of Judge Davenport and Ms. Cargile and had determined that it was not sufficient to warrant modification of its prior decision. The September 23, 1997 statement from appellant's supervisors does not establish that appellant was on a special mission or errand on September 19, 1996 when she mailed the office correspondence in the off-premises mailbox such that she was in the performance of duty at the time of her accident. The September 23, 1997 statement noted January 19, 1996 was a Friday, that the depositing of the mail in the outside mailbox for a Friday evening pickup was a legitimate function of appellant's position, and that such depositing of the mail helped to ensure that the employing establishment's mission was fully and expeditiously accomplished. However, the statement specifically recognized that appellant was never directed to leave the premises to deposit the Office correspondence in the outside mailbox. As well, it does not establish that on September 19, 1996 appellant was on a special mission or errand. The September 23, 1997 statement from appellant's supervisors fails to raise a substantial question as to the correctness of the denial of appellant's claim and thus does not establish clear evidence of error regarding the denial of her claim.¹¹ Accordingly, the Board finds that the arguments and evidence submitted by appellant in support of her application for review do not raise a substantial question as to the correctness of the Office's May 28, 1998 decision and, thus, are insufficient to demonstrate clear evidence of error.

⁹ *Pete F. Dorso*, 52 ECAB 424 (2001); *John Crawford*, 52 ECAB 395 (2001).

¹⁰ *Veletta C. Coleman*, 48 ECAB 367 (1997); *Larry L. Lilton*, 44 ECAB 243 (1992).

¹¹ See *Linda K. Cela*, 52 ECAB 288, 290 (2001) (evidence that is vague or incomplete about the matter in issue is not sufficient to establish clear evidence of error).

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for reconsideration of the merits on the grounds that it was untimely filed and failed to show clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member