United States Department of Labor
Employees' Compensation Appeals Board

GEORGE G. THOMAS, Appellant	)	
	)	**Docket No. 05-808**
and	)	**Issued: July 14, 2005**
DEPARTMENT OF THE NAVY,	)	
NAVY AVIATION DEPOT,	)	
Cherry Point, NC Employer	)	

Appearances:
George G. Thomas, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 22, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated December 9, 2004 which denied her reconsideration request on the grounds that it was untimely filed and failed to present clear evidence of error. Because more than one year has elapsed between the most recent merit decision dated August 15, 2002 and the filing of this appeal on February 22, 2005 the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue on appeal is whether the Office properly determined that appellant's request for reconsideration dated October 14, 2004 was not timely filed and failed to present clear evidence of error.

FACTUAL HISTORY

This is the fourth appeal in the present case. In an April 23, 2004 decision, the Board affirmed a September 15, 2003 Office decision which denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant merit review.[1] The law and the facts of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.[2]

In a letter dated October 14, 2004, appellant requested reconsideration and submitted additional medical evidence.

In treatment notes dated June 26, 2003 to July 12, 2004, Dr. Dan M. Henshaw, a Board-certified dermatologist, noted that appellant presented with plaque lesions on his legs, back and arms. He diagnosed atopic dermatitis and prescribed oral medication and topical ointment. Dr. Henshaw noted that on June 1, 2004 appellant presented with itching and burning of his arms, legs and back. Appellant reported that he worked three and a half years as an equipment cleaner including sandblasting and spraying of chemicals, and believed that this chemical exposure resulted in his dermatitis. Dr. Henshaw prescribed additional topical ointments. On July 12, 2004 he noted that appellant showed no signs of improvement and diagnosed chronic atopic dermatitis with severe itching and scratching of the infected areas. Dr. Henshaw recommended continued use of the topical ointment. In a report dated October 4, 2004, he noted treating appellant from June 26, 2003 to July 12, 2004. Appellant reported that he developed an irritant contact dermatitis as a result of chemical and toxic exposures from spray cleaning or sandblasting aircraft and equipment. He noted that the etiology of appellant's current diagnosis, including atopic dermatitis or nummular eczema was poorly understood and could include genetic factors, xerosis of the skin, stress and tension, and allergic or irritant contact dermatitis factor. Dr. Henshaw opined that it was possible that the episode of irritant contact dermatitis may have triggered or led to his current and continued skin condition. Dr. Henshaw advised that appellant continued to have scaly, pruritic, circumscribed plaque lesions of the arms, legs and back and experienced intense itching, scratching and burning and would require continued dermatologic therapy. He opined that appellant should be favorably considered for continued compensation benefits.

By decision dated December 9, 2004, the Office denied appellant's request for reconsideration on the grounds that it was not timely and he did not present clear evidence of error by the Office.

[1] In a decision dated February 8, 1989, the Office accepted appellant's claim for irritant dermatitis and paid appropriate wage-loss compensation. Effective August 15, 1999, the Office terminated appellant's compensation benefits on the basis that he had no continuing disability due to his work-related dermatitis.

[2] Docket No. 04-515 (issued April 23, 2004).

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
>
> (1) end, decrease or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."[3]

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, 20 C.F.R. § 10.607(a) provides that the Office will not review a decision unless the application for review is filed within one year of the date of that decision.[4]

However, the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation, if the claimant's application for review shows clear evidence of error on the part of the Office in its most recent merit decision. To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by the Office. The evidence must be positive, precise and explicit and must be manifested on its face that the Office committed an error.[5] To show clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflicting 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's decision.[6] Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.[7] It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.[8] This entails a limited review by the Office of the evidence previously of record and whether the new evidence demonstrates clear error on the part of the Office.[9] The Board makes an independent determination as to whether a claimant has submitted clear evidence of error on the part of the Office.[10]

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[3] 5 U.S.C. § 8128(a).

[4] 20 C.F.R. § 10.607(b); *Annie L. Billingsley*, 50 ECAB 210 (1998).

[5] 20 C.F.R. § 10.607(b); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

[6] *Annie L. Billingsley*, *supra* note 4.

[7] *Jimmy L. Day*, 48 ECAB 652 (1997).

[8] *Id.*

[9] *Id.*

[10] *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Mathews*, 44 ECAB 765,770 (1993).

ANALYSIS

In its December 9, 2004 decision, the Office properly determined that appellant failed to file a timely application for review. The Office issued its most recent merit decision on August 15, 2002 and appellant's request for reconsideration was dated October 14, 2004, which was more than one year after August 15, 2002. Accordingly, appellant's request for reconsideration was not timely filed.

The Board has reviewed evidence submitted with appellant's most recent reconsideration request and concludes that appellant has not established clear evidence of error. Dr. Henshaw noted treating appellant on three occasions from June 26, 2003 to July 12, 2004. His treatment notes from June 26, 2003 to July 12, 2004 indicated that appellant was treated for itching and burning of his arms, legs and back and the physician diagnosed chronic atopic dermatitis. Dr. Henshaw, however, did not provide a rationalized opinion supporting causal relationship of the diagnosed conditions of dermatitis to appellant's employment. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[11] Thus, it cannot be said that these reports raise a substantial question as to the correctness of the Office's prior decisions.[12]

Dr. Henshaw's report dated June 1, 2004 referenced a history of appellant's injury occurring while appellant worked at the employing establishment as an equipment cleaner including sandblasting and spraying of chemicals. However, he failed to provide an opinion regarding whether appellant had any continuing disability due to his work-related dermatitis. He did not provide any rationale explaining how appellant's current condition was causally related to his accepted work-related injury. This report does not raise a substantial question as to the correctness of the Office's prior decisions.

Dr. Henshaw's report dated October 4, 2004 noted that "the etiology of his current diagnosis, including [a]topic [d]ermatitis (a type of eczema) and/or Nummular Eczema is poorly understood and can include genetic factors, xerosis of the skin, stress and tension, and allergic or irritant contact dermatitis factor." He opined that it was "possible" that the episode of irritant contact dermatitis may have triggered or led to his current and continued skin condition. Although Dr. Henshaw noted a "possibility" that appellant's current condition was caused by allergic or irritant contact dermatitis factor, his opinion is speculative. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.[13] The Board finds that this evidence is insufficient to *prima facie* shift the weight of the evidence in appellant's favor.

[11] *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).

[12] *Id.*

[13] *See Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

The Board finds that the evidence submitted with the untimely reconsideration request is insufficient to raise a substantial question as to the correctness of the Office's most recent merit decision. The Office properly found that it did not establish clear evidence of error. 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 14, 2004 was untimely filed and did not demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board