

By decision dated February 26, 2003, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained an injury on October 13, 2002 causally related to factors of her employment. Appellant requested an oral hearing that was held on October 28, 2003.

By decision dated January 21, 2004, the Office hearing representative affirmed the February 26, 2003 decision.

By letter dated February 23, 2005, appellant requested reconsideration and submitted additional evidence. In a February 15, 2005 report, Dr. Michael Palmeri, an attending Board-certified orthopedic surgeon, discussed appellant's left ankle condition.¹

By decision dated May 18, 2005, the Office denied appellant's request for reconsideration on the grounds that it was untimely and failed to show clear evidence of error in the January 21, 2004 merit decision.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act² does not entitle a claimant to a review of an Office decision as a matter of right.³ This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.⁴ The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority. One such limitation is that the Office will not review a decision denying or terminating a benefit unless the request for reconsideration is filed within one year of the date of that decision.⁵ The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).⁶

Section 10.607(b) states that the Office will consider an untimely application for reconsideration only if it demonstrates clear evidence of error by the Office in its most recent merit decision. The reconsideration request must establish that the Office's decision was, on its face, erroneous.⁷

¹ Dr. Palmeri indicated that the ankle condition was work related but did not indicate how or when the condition was sustained.

² 5 U.S.C. § 8128(a).

³ *Thankamma Mathews*, 44 ECAB 765 (1993).

⁴ *Id.* at 768.

⁵ 20 C.F.R. § 10.607; *see also Alberta Dukes*, 56 ECAB ____ (Docket No. 04-2028, issued January 11, 2005).

⁶ *Thankamma Mathews*, *supra* note 3 at 769.

⁷ 20 C.F.R. § 10.607(b); *see also Donna M. Campbell*, 55 ECAB ____ (Docket No. 03-2223, issued January 9, 2004).

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.⁸ The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error.⁹ Evidence which 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 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's decision.¹² 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.¹³

ANALYSIS

Since more than one year elapsed between issuance of the January 21, 2004 Office decision and appellant's February 23, 2005 reconsideration request, the request for reconsideration was untimely. Consequently, she must demonstrate "clear evidence of error" by the Office in denying her claim for compensation.¹⁴

In support of her reconsideration request, appellant submitted a February 15, 2005 report in which Dr. Palmeri discussed a left ankle condition. The injury appellant claimed in this case is a left shoulder injury. Therefore, this report concerning an ankle injury does not raise a substantial question as to as to the correctness of the Office's last merit decision regarding her left shoulder condition and is of insufficient probative value to *prima facie* shift the weight of the evidence in her favor.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.

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

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

¹⁰ *Darletha Coleman*, 55 ECAB ____ (Docket No. 03-868, issued November 10, 2003).

¹¹ *Leona N. Travis*, *supra* note 9.

¹² *Darletha Coleman*, *supra* note 10.

¹³ *Pete F. Dorso*, 52 ECAB 424 (2001).

¹⁴ *Howard Y. Miyashiro*, 51 ECAB 253 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 18, 2005 is affirmed.

Issued: October 21, 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