

**United States Department of Labor
Employees' Compensation Appeals Board**

T.O., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dallas, TX, Employer**

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Docket No. 06-249

Issued: August 18, 2006

Appearances:
T.O., 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 November 10, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' October 6, 2005 decision, 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 Office merit decision of April 17, 2003 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

ISSUE

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

FACTUAL HISTORY

On January 14, 2003 appellant, then a 33-year-old mail carrier, filed an occupational disease claim alleging that she developed a right knee condition while performing her mail carrier duties. She became aware of her condition on August 15, 2002. Appellant did not stop work.

By letter dated February 19, 2003, the Office advised appellant of the factual and medical evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted employing establishment medical records from Dr. Robert Stuart, a Board-certified internist. In a report dated July 21, 1998, Dr. Stuart noted that appellant was fit for duty. Also submitted was a nurse's note dated August 12, 2002, which advised that appellant could return to work under restrictions. A magnetic resonance imaging (MRI) scan of the right knee dated January 8, 2003 revealed Grade 3 chondromalacia of all three joints of the right knee and a tear of the medial meniscus. Appellant also submitted a January 14, 2003 statement noting that in August 2002, while delivering mail, she experienced pain and buckling in her right knee.

In a decision dated April 17, 2003, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that the claimed right knee condition was causally related to the established work-related events.

In a letter dated September 15, 2005, appellant requested reconsideration, noting that she continued to have right knee problems and was working subject to restrictions. She submitted a note from Dr. Michael E. Muncy, an osteopath, dated June 19, 2003, who referred appellant for physical therapy. In a report dated August 28, 2003, Dr. Muncy noted that appellant presented with a right knee condition that was resolving. He noted positive findings upon physical examination and diagnosed possible tear of the lateral meniscus, right knee pain, status post medial meniscectomy and status post debridement. Dr. Muncy returned appellant to light-duty subject to various restrictions. In attending physician's reports dated September 15, 2003 and August 1, 2005, Dr. Muncy noted a date of injury of August 15, 2002 and diagnosed meniscal injury of the right knee. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. In a January 26, 2005 report, Dr. James Pfister, Board-certified in family practice, stated that appellant was treated for chronic knee pain and underwent arthroscopic surgery. He recommended light-duty work. On September 8, 2005 appellant indicated that she was unaware of the time limit for filing a reconsideration request and thought that the employing establishment had sent the necessary paperwork to the Office to sustain her claim.

By decision dated October 6, 2005, the Office denied appellant's application for reconsideration on the grounds that the request was not timely and that appellant did not present clear evidence of error by the Office.

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.”¹

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.²

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.³

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.⁴

Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.⁵ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.⁶ 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.⁷ The Board makes an independent

¹ 5 U.S.C. § 8128(a).

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

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

⁴ *Annie L. Billingsley*, *supra* note 2.

⁵ *Jimmy L. Day*, 48 ECAB 652 (1997).

⁶ *Id.*

⁷ *Id.*

determination as to whether a claimant has submitted clear evidence of error on the part of the Office.⁸

ANALYSIS

In its October 6, 2005 decision, the Office properly determined that appellant failed to file a timely application for review. The Office issued its most recent merit decision on April 17, 2003 and appellant's request for reconsideration was dated September 15, 2005, more than one year following the decision. Accordingly, appellant's request for reconsideration was not timely filed.

The Board has also reviewed the evidence submitted with appellant's untimely reconsideration request and concludes that a merit review is also not warranted as appellant has not established clear evidence of error on the part of the Office in its most recent merit decision.

Appellant submitted reports from Dr. Muncy dated June 19 and August 28, 2003, who noted that appellant presented with a resolving right knee condition. He listed diagnoses and recommended light duty subject to various restrictions. However, this evidence is insufficient to raise a substantial question as to the correctness of the Office's decision as these reports do not address the underlying issue in the claim -- the causal relationship of appellant's diagnosed condition to her employment. Dr. Muncy did not provide a rationalized opinion supporting causal relationship of the diagnosed conditions of chondromalacia and meniscus tear of the right knee to appellant's employment. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁹

Appellant also submitted attending physician's reports dated September 15, 2003 and August 1, 2005, from Dr. Muncy who noted a date of injury of August 15, 2002 and diagnosed meniscal injury of the right knee. Dr. Muncy noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. However, this evidence is also insufficient to raise a substantial question as to the correctness of the Office's decision as this report does not sufficiently address the underlying deficiency in the claim -- the causal relationship of appellant's diagnosed condition to her employment. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.¹⁰ Thus, it cannot be said that these reports raise a substantial question as to the correctness of the Office's prior decisions.¹¹

⁸ *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Mathews*, 44 ECAB 765,770 (1993).

⁹ 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).

¹⁰ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

¹¹ See *Jimmy L. Day*, *supra* note 5.

Dr. Pfister noted that appellant was treated for chronic knee pain and underwent arthroscopic surgery. The Board finds that this evidence is insufficient to raise a substantial question as to the correctness of the Office's decision and, therefore, does not establish that the denial of appellant's claim was improper. He failed to provide a rationalized opinion supporting causal relationship of the diagnosed conditions of chronic knee pain to appellant's employment.¹² Thus, it cannot be said that these reports raises a substantial question as to the correctness of the Office's prior decisions.¹³

Appellant also submitted an MRI scan of the right knee dated January 8, 2003 and a narrative statement dated January 14, 2003. However, the Office had previously considered this evidence prior to issuing its April 17, 2003 decision and appellant, in submitting these documents, did not explain how this evidence was positive, precise and explicit in manifesting on its face that the Office committed an error. It is not apparent how resubmission of these documents are of sufficient probative value to raise a substantial question as to the correctness of the Office's decision.

The Board, therefore, finds these records are insufficient to raise a substantial question as to the correctness of the Office's merit decision and the Office properly denied appellant's reconsideration request.

CONCLUSION

The Office properly determined that appellant's request for reconsideration dated September 15, 2005 was untimely filed and did not demonstrate clear evidence of error.

¹² See *Michael E. Smith*, 50 ECAB 313 (1999).

¹³ See *Jimmie H. Duckett*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the October 6, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2006
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