

insufficient to show clear evidence of error.¹ The Board noted that the last merit decision, dated March 13, 1990, denied his claim for an emotional condition after finding that he did not establish any compensable employment factors. The findings of fact and conclusions of law from the prior decision are incorporated by reference.

By letter dated August 10, 1998, appellant requested an oral hearing before an Office hearing representative. In a decision dated September 24, 1998, the Office denied his hearing request under 5 U.S.C. § 8124 after finding that it did not have jurisdiction to review a Board decision.

In a letter dated August 31, 2005, appellant asked the Office's assistance with a loan.² He enclosed papers from the Federal Employees' Retirement System (FERS) and the Thrift Savings Plan (TSP).³ In a telephone call on the same date, he informed the Office that he received disability retirement but wanted the Office to cover his medical expenses. Appellant alleged that he was terminated from the employing establishment "for a work-related skin condition."

In a telephone call to the Office dated September 19, 2005, appellant asserted that the employing establishment required him to retire because of a skin condition. He also raised issues relevant to obtaining benefits from the Social Security Administration.

In a letter dated January 20, 2006, appellant maintained that he had experienced a recurrence of his condition and required further treatment. By letter dated February 1, 2006, the Office informed him that it had not accepted any employment-related skin condition and that he was not authorized to receive medical treatment.

On February 28, 2006 appellant requested reconsideration of his claim. He alleged that he experienced a skin or stress condition which adversely affected his relationship with his coworkers.⁴ Appellant also indicated that his parents required his care during this period. He maintained that his need for medication continued after 1999, when his workers' compensation ceased.⁵

¹ *Benjamin R. Tabarango*, Docket No. 96-1185 (issued March 5, 1998).

² Appellant, in a letter dated January 3, 2005, informed the Office that he was enclosing his parents' death certificates and noted that there was a "sizable amount" in a retirement account. In a letter dated August 20, 2005, he requested that the Office transfer funds from his retirement account to pay for his medical expenses. By letter dated August 31, 2005, the Office informed appellant that his case was retired and that the records were being retrieved.

³ By letter dated September 19, 2005, the Office notified appellant that it did not administer FERS or TSP and provided him with contact information.

⁴ It is unclear from his letter whether the word used is "stress" or "skin."

⁵ It does not appear from the record that appellant has an accepted federal workers' compensation claim.

By decision dated March 16, 2006, the Office denied appellant's request for reconsideration on the grounds that it was untimely and did not establish clear evidence of error.⁶

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.⁷ 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.⁸ 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.⁹ 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.¹⁰ 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.¹¹

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 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.¹² 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's decision.¹³ The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the

⁶ The Office found that appellant had not established clear evidence of error in the March 5, 1998 decision. The issue, however, is whether appellant has established clear evidence of error in last merit decision by the Office, issued March 13, 1990.

⁷ 5 U.S.C. §§ 8101-8193.

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

⁹ *Veletta C. Coleman*, 48 ECAB 367 (1997).

¹⁰ *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 decision. The application must establish, on its face, that such decision was erroneous." 20 C.F.R. § 10.607(b).

¹¹ *See Nelson T. Thompson*, 43 ECAB 919 (1992).

¹² *Dorletha Coleman*, 55 ECAB 143 (2003); *Leon J. Modrowski*, 55 ECAB 196 (2004).

¹³ *Id.*

part of the Office such that the Office abused its discretion in denying merit review in the face of such evidence.¹⁴

ANALYSIS

The Office properly determined that appellant failed to file a timely application for review. The Office's procedures provide that the one-year time limitation period for requesting reconsideration begins the date following an original Office decision.¹⁵ A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.¹⁶ Appellant's February 28, 2006 request for reconsideration was submitted more than one year after the last merit decision of record dated March 13, 1990 and, thus, it was untimely. Consequently, he must demonstrate clear evidence of error by the Office in denying his claim for compensation.¹⁷

In its last merit decision dated March 13, 1990, the Office denied appellant's emotional condition claim because he did not establish any compensable employment factors. On reconsideration appellant alleged that he sustained a skin or stress condition and that his relationships with his coworkers deteriorated. He also asserted that the employing establishment forced him to retire on disability because of a skin condition. Appellant did not raise any argument relevant to the issue of whether he established an emotional condition caused by factors of his federal employment. He further did not submit any evidence supporting his allegation that he was forced to take disability retirement and did not explain how this would be pertinent to his emotional condition claim. Evidence which is not relevant to the issue which was decided by the Office is not sufficient to establish clear evidence of error.¹⁸

Appellant submitted evidence pertaining to his TSP and FERS accounts. This evidence, however, does not address the issue of whether appellant has established a compensable employment factor. Thus, it does not establish clear evidence of error.¹⁹

The evidence submitted in support of appellant's untimely reconsideration request is irrelevant and thus insufficient to establish clear evidence of error. To establish clear evidence of error, the evidence must be of sufficient probative value to *prima facie* shift the weight of evidence in favor of the claimant and raise a substantial question as to the correctness of the Office's decision.²⁰ The evidence submitted on reconsideration fails to meet this standard.

¹⁴ *Pete F. Dorso*, 52 ECAB 424 (2001); *John Crawford*, 52 ECAB 395 (2001).

¹⁵ 20 C.F.R. § 10.607(a).

¹⁶ *Robert F. Stone*, 57 ECAB ____ (Docket No. 04-1451, issued December 22, 2005).

¹⁷ 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB ____ (Docket No. 05-1637, issued October 18, 2005).

¹⁸ *See Alberta Dukes*, 56 ECAB ____ (Docket No. 04-2028, issued January 11, 2005).

¹⁹ *Id.*

²⁰ *See Veletta C. Coleman*, *supra* note 9.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration on the grounds that it was not timely filed and did not establish clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 16, 2006 is affirmed.

Issued: December 15, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board