

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

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CLARETHA WILLIAMS, Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Los Angeles, CA, Employer )

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**Docket No. 06-545  
Issued: May 3, 2006**

*Appearances:*  
*Claretha Williams, 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 January 10, 2006 appellant filed an appeal of an October 13, 2005 decision of the Office of Workers' Compensation Programs which denied her request for reconsideration on the grounds that it was untimely filed and failed to demonstrate clear evidence of error. Because more than one year has elapsed between the last merit decision dated May 22, 1990 to the filing of this appeal on January 10, 2006, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board lacks jurisdiction to review the merits of appellant's claim.

**ISSUE**

The issue is whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128 on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

**FACTUAL HISTORY**

This case has been before the Board on five prior occasions. By decisions dated August 27, 1979, January 11, 1982 and April 11, 1984, the Board remanded the case to the

Office to further develop the medical evidence.<sup>1</sup> In a decision dated April 18, 1985, the Board affirmed an Office decision dated October 24, 1984 which denied appellant's claim that she sustained an employment-related disability.<sup>2</sup> In an August 24, 1993 decision, the Board affirmed an April 11, 1991 decision in which the Office denied appellant's reconsideration request.<sup>3</sup> The law and facts as set forth in the previous Board decisions are incorporated herein by reference.

Subsequent to the Board's August 24, 1993 decision, on June 20, 2005, appellant requested reconsideration. She stated that medical evidence supported her claim but did not submit any additional evidence. In an October 13, 2005 decision, the Office denied appellant's reconsideration request on the grounds that it was untimely filed and failed to present clear evidence of error.

### **LEGAL PRECEDENT**

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of the Federal Employees' Compensation Act.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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. 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 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 part of the Office.<sup>7</sup>

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<sup>1</sup> Docket Nos. 79-992, 82-244 and 84-709.

<sup>2</sup> Docket No. 85-526.

<sup>3</sup> Docket No. 91-1604. The Board notes that by decision dated May 22, 1990 the Office had advised appellant of the right to request reconsideration within one year and to submit additional evidence on her claim.

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> 20 C.F.R. § 10.607(b); see *Gladys Mercado*, 52 ECAB 255 (2001).

<sup>6</sup> *Cresenciano Martinez*, 51 ECAB 322 (2000).

<sup>7</sup> *Nancy Marcano*, 50 ECAB 110 (1998).

### ANALYSIS

The only decision before the Board is the October 13, 2005 decision in which the Office denied appellant's request for reconsideration on the grounds that the request was untimely filed and failed to demonstrate clear evidence of error. The most recent Office merit decision is dated May 22, 1990. The appeal rights attached to that decision provided appellant with notice that she had a one-year time period for requesting further reconsideration and submitting additional evidence in support of her claim.<sup>8</sup> Therefore, appellant's request for reconsideration dated June 20, 2005 was untimely.

The Board finds that appellant failed to establish clear evidence of error. With her request for reconsideration, she merely contended that the medical evidence was sufficient to establish her claim. In order to establish clear evidence of error, a claimant must submit evidence that is positive, precise and explicit and must manifest on its face that the Office committed an error.<sup>9</sup> In the case at hand, appellant did not submit any new evidence. The Office had previously found and the Board affirmed that appellant failed to establish any employment-related disability. There is no positive, precise and explicit evidence in this case to show that the Office committed error.<sup>10</sup> The Board finds that she did not establish clear error in her request letter. Consequently, she has not met her burden to establish clear evidence of error on the part of the Office. The Office properly denied further merit review.

The Board finds that the Office properly performed a limited review of appellant's claim to ascertain whether it demonstrated clear evidence of error. It properly denied her untimely request for a merit reconsideration.

### CONCLUSION

The Board finds that appellant's request for reconsideration was untimely filed and she failed to establish clear evidence of error. The Office, therefore, properly denied further merit review of her claim.

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<sup>8</sup> See *Julia C. Thompson*, 42 ECAB 183 (1990). See also 20 C.F.R. § 10.607.

<sup>9</sup> *Nancy Marcano*, *supra* note 7.

<sup>10</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 13, 2005 be affirmed.

Issued: May 3, 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