

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

---

**J.H., Appellant**

**and**

**PANAMA CANAL COMMISSION, PEDRO  
MIGUEL LOCKS, Panama City, Panama,  
Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 07-512  
Issued: August 6, 2007**

*Appearances:*  
*Appellant, 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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 14, 2006 appellant filed a timely appeal from a July 7, 2006 nonmerit decision of the Office of Workers' Compensation Programs, denying his request for reconsideration and finding that it failed to establish clear evidence of error. Because more than one year has elapsed between the most recent merit decision dated November 15, 2002 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) and 501.3(d)(2).

**ISSUE**

The issue is whether the Office properly denied appellant's request for reconsideration on the grounds that it was not timely filed and failed to establish clear evidence of error.

**FACTUAL HISTORY**

On January 4, 2000 appellant, then a 57-year-old retired cement worker, filed an occupational disease claim. He first became aware of his depression and realized that it was

caused by factors of his federal employment on July 10, 1982. Appellant stated that his depression was caused by head trauma which resulted from being hit on the head by a hose that was connected to a jack hammer. He retired on disability effective September 2, 1987.

By letter dated October 8, 2002, the Office advised appellant that it did not appear that his claim was timely filed. It addressed the factual and medical evidence that he needed to submit to establish his claim within 30 days. Appellant did not respond within the allotted time period.

In a decision dated November 15, 2002, the Office denied appellant's claim on the grounds that it was not timely filed within the applicable time limitation provisions of the Federal Employees' Compensation Act. The record did not establish that the claim was filed within the three-year time limitation period which began to run on July 10, 1982, the date of injury and the date appellant became aware of the causal relationship between the claimed injury and his employment. Further, the record did not establish that appellant's supervisor had actual knowledge of the claimed 1982 injury within 30 days. By letter dated December 13, 2002 and postmarked December 18, 2002, appellant requested an oral hearing before an Office hearing representative.

In a decision issued on February 24, 2003, the Branch of Hearings and Review found that appellant's request for a hearing was not timely filed pursuant to 5 U.S.C. § 8124(b)(1). It found that appellant's request was dated December 13, 2002 and postmarked December 18, 2002, more than 30 days after the Office's November 15, 2002 decision and was untimely. The Office further denied his request because the issue of whether he filed a timely occupational disease claim could equally well be addressed by requesting reconsideration and submitting relevant evidence.

On March 13, 2006 appellant submitted an August 1, 2005 medical report of Dr. Guillermo Garcia Ruiz, a licensed psychiatrist in Panama.<sup>1</sup> Dr. Garcia Ruiz stated that he had been treating appellant since he sustained head trauma and depression in 1982.<sup>2</sup>

In an undated letter received by the Office on May 12, 2006, appellant requested reconsideration of the Office's November 15, 2002 decision.

By decision dated July 7, 2006, the Office found that appellant's letter requesting reconsideration was undated and received on May 12, 2006, more than one year after the Office's November 15, 2002 decision and was untimely. It found that appellant did not submit evidence to establish clear evidence of error in the prior decision finding that his occupational disease claim was not timely filed.

---

<sup>1</sup> The Board notes that Dr. Garcia Ruiz is not Board-certified in the United States.

<sup>2</sup> Dr. Garcia Ruiz's August 1, 2005 medical report was initially submitted to the Office in Spanish and subsequently translated into English.

## LEGAL PRECEDENT

Section 8128(a) of the Act<sup>3</sup> does not entitle a claimant to a review of an Office decision as a matter of right.<sup>4</sup> The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a). Section 10.607(a) of the Office's implementing regulation provides that an application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.<sup>5</sup>

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.<sup>6</sup>

To establish clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by the Office.<sup>7</sup> The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error.<sup>8</sup> Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.<sup>9</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>10</sup> 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.<sup>11</sup>

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 decision.<sup>12</sup> 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.<sup>13</sup>

---

<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>5</sup> 20 C.F.R. § 10.607(a).

<sup>6</sup> *Id.* at § 10.607(b).

<sup>7</sup> *Nancy Marcano*, 50 ECAB 110, 114 (1998).

<sup>8</sup> *Leona N. Travis*, 43 ECAB 227, 241 (1991).

<sup>9</sup> *Richard L. Rhodes*, 50 ECAB 259, 264 (1999).

<sup>10</sup> *Leona N. Travis*, *supra* note 8.

<sup>11</sup> *See Nelson T. Thompson*, 43 ECAB 919 (1992).

<sup>12</sup> *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

<sup>13</sup> *Thankamma Mathews*, 44 ECAB 765, 770 (1993).

### ANALYSIS

The Board finds that the Office properly determined that appellant failed to file a timely application for review. In implementing the one-year time limitation, the Office's procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues.<sup>14</sup>

The last merit decision in this case was issued by the Office on November 15, 2002. It found that appellant's occupational disease claim was not timely filed. As his undated letter requesting reconsideration, which was received on May 12, 2006, was made more than one year after the Office's November 15, 2002 merit decision, the Board finds that it was not timely filed.

The issue for purposes of establishing clear evidence of error in this case, is whether appellant established that his occupational disease claim was timely filed. Appellant submitted Dr. Garcia Ruiz's August 1, 2005 report which found that he sustained head trauma and depression in 1982. Dr. Garcia Ruiz's report is insufficient to *prima facie* shift the weight of the evidence in favor of appellant's claim. This evidence does not address or contain any relevant information pertinent to the issue of whether appellant timely filed a claim for an emotional condition. For this reason, the Board finds that appellant has not established clear evidence of error on the part of the Office.

### CONCLUSION

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

---

<sup>14</sup> See *Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 7, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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