

truck and sustained injury to his back. The claim was accepted for acute muscle spasm with C5-6 radiculopathy and for a discectomy and fusion at C5, C6-7. Appellant received appropriate compensation until June 18, 1994.

By decision dated July 13, 1994, the Office terminated appellant's compensation benefits effective June 18, 1994 due to his refusal of a suitable light-duty job, *i.e.*, a position as an orders clerk for the employing establishment. The Office found that a conflict in medical opinion arose between appellant's treating physician, Dr. Eugene Carlisle, a Board-certified orthopedic surgeon, and the second opinion physician, Dr. Michael Plooster, a Board-certified orthopedic surgeon, with regard to appellant's ability to work the light-duty position. The Office referred appellant to Dr. Gay R. Anderson, a Board-certified orthopedic surgeon, to resolve the conflict. Dr. Anderson stated that appellant could perform the duties of the offered position. By decision dated July 17, 1995, the hearing representative affirmed the Office's decision of June 20, 1994. In response to a request for reconsideration, on July 24, 1996, the Office issued a decision denying modification of its prior decisions. Subsequent requests for reconsideration were denied by the Office without merit review on February 4 and March 17, 1997.

By letter dated July 15, 2005, appellant's congressional senatorial representative requested that the Office provide him with current information on appellant's appeal. The Office treated this letter as a request for reconsideration. Appellant submitted a May 10, 2005 letter by his treating physician, Dr. Carlisle, who noted that he had followed appellant for his injuries and illnesses for many years, even preceding 1992. Dr. Carlisle reiterated his prior opinions of November 19, 1992 and August 15, 1996 that appellant was totally and permanently disabled. He noted that appellant continued to have chronic pain related to the employment injury of February 9, 1979.

By decision dated August 24, 2005, the Office denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate 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.¹ 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.² 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.³ The Office's implementing procedures state that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth at section 10.607, if the claimant's application for review

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.607(b); *see Gladys Mercado*, 52 ECAB 255 (2001).

³ *Cresenciano Martinez*, 51 ECAB 322 (2000).

shows clear evidence of error. 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.⁴

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.⁵

ANALYSIS

The last merit decision in this case was dated July 24, 1996. The date of request for reconsideration was July 15, 2005. Since the application for reconsideration was filed more than one year after the last merit decision, it is untimely pursuant to 20 C.F.R. § 10.607(a).

The underlying decision terminated appellant's compensation benefits because he refused an offer of suitable work. On reconsideration, appellant submitted a report from his attending physician, Dr. Carlisle, who restated his prior opinion that he was totally disabled. This is repetitive of Dr. Carlisle's earlier opinions of record. The Office had already considered Dr. Carlisle's opinion, noted that it differed from the opinion of Dr. Plooster, the second opinion physician, and referred appellant for an impartial medical examination by Dr. Anderson. The Office relied upon Dr. Anderson's opinion to find that the position offered by the employing establishment was suitable to appellant's physical limitations. Dr. Carlisle's opinion does not add any new findings to appellant's case and accordingly does not show clear evidence of error on the part of the Office in determining that appellant refused suitable employment.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claims on the grounds that his request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

⁴ 20 C.F.R. § 10.607.

⁵ *Alberta Dukes*, 56 ECAB ___ (Docket No. 04-2028, issued January 11, 2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 24, 2005 is affirmed.

Issued: July 13, 2007
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