

FACTUAL HISTORY

On July 19, 1996 appellant, then a 49-year-old motor vehicle operator, filed a traumatic injury claim alleging that he sustained a dislocated left thumb while lowering a truck door. The Office accepted his claim for a left thumb dislocation. The Office subsequently accepted a recurrence of disability sustained on July 11, 1998.

On September 17, 2004 appellant filed a claim for a recurrence of disability commencing August 11, 2004. By decision dated December 14, 2004, the Office denied appellant's claim on the grounds that the evidence was not sufficient to establish that he sustained a recurrence of disability on August 11, 2004 causally related to his July 19, 1996 employment injury.

On June 22, 2005 appellant requested reconsideration and submitted additional evidence. By decision dated July 6, 2005, the Office denied modification of the December 14, 2004 decision.

On March 9, 2006 appellant submitted a letter to the Office at the address specified in the appeal rights attached to his copy of the July 6, 2005 decision. He stated that he disagreed with the July 6, 2005 decision and expressed his reasons. Appellant submitted a February 16, 2006 report from Dr. Vanda L. Davidson, an attending orthopedic surgeon, who stated that appellant had experienced left thumb pain for the past six to eight months. Dr. Davidson noted that appellant sustained a dislocated left thumb in July 1996. She provided findings on examination and indicated that x-rays revealed mild to moderate arthritic changes.

On October 9, 2006 appellant again requested reconsideration and submitted another copy of Dr. Davidson's February 16, 2006 report.

By decision dated December 22, 2006, the Office denied appellant's October 9, 2006 request for reconsideration on the grounds that it was untimely and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act² does not entitle a claimant to a review of an Office decision as a matter of right.³ This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.⁴ The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority. One such limitation is that the Office will not review a decision denying or terminating a benefit unless the request for reconsideration is filed within one year of the date of that decision.⁵ The Board has found that the imposition of this one-year time

² 5 U.S.C. § 8128(a).

³ *Thankamma Mathews*, 44 ECAB 765 (1993).

⁴ *Id.* at 768.

⁵ 20 C.F.R. § 10.607; *see also Alberta Dukes*, 56 ECAB ____ (Docket No. 04-2028, issued January 11, 2005).

limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).⁶

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.⁷ To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.⁸ The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error.⁹ Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.¹⁰ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹¹ 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.¹² 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.¹³

ANALYSIS

On March 9, 2006 appellant submitted a letter to the Office at the address specified in the appeal rights attached to his copy of the July 6, 2005 decision. He stated that he disagreed with the July 6, 2005 decision and expressed his reasons. Appellant submitted new evidence.

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."¹⁴ An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application

⁶ *Thankamma Mathews*, *supra* note 3 at 769.

⁷ 20 C.F.R. § 10.607(b); *see also Donna M. Campbell*, 55 ECAB 241 (2004).

⁸ *Dean D. Beets*, 43 ECAB 1153 (1992).

⁹ *Leona N. Travis*, 43 ECAB 227 (1991).

¹⁰ *Darletha Coleman*, 55 ECAB 143 (2003).

¹¹ *Leona N. Travis*, *supra* note 9.

¹² *Darletha Coleman*, *supra* note 10.

¹³ *Pete F. Dorso*, 52 ECAB 424 (2001).

¹⁴ 20 C.F.R. § 10.605; *see also Donna L. Shahin*, 55 ECAB 192 (2003).

for reconsideration, including all supporting documents, must be submitted in writing and must set forth arguments and contain evidence that shows that the Office erroneously applied or interpreted a specific point of law, advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.¹⁵

The Board finds that appellant's March 9, 2006 letter constitutes a timely request for reconsideration. This letter was submitted within one year of the July 6, 2005 merit decision to the address specified in the appeal rights attached to the decision. Appellant stated that he disagreed with the July 6, 2005 decision and provided reasons. He also submitted additional medical evidence. The Office applied an erroneous standard of review to the evidence submitted by appellant.

As appellant submitted a timely reconsideration request, the case is remanded for review of the medical evidence submitted in support of the request. Following such review and any other development deemed necessary, the Office shall issue an appropriate decision in this case.

CONCLUSION

The Board finds that appellant submitted a timely request for reconsideration on March 9, 2006.

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2006 decision of the Office of Workers' Compensation Programs denying appellant's request for reconsideration is hereby set aside and the case remanded to the Office for further development and issuance of an appropriate decision.

Issued: June 15, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

¹⁵ 20 C.F.R. § 10.606.