

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

---

C.E., Appellant )

and )

**DEPARTMENT OF THE TREASURY,** )  
**INTERNAL REVENUE SERVICE, Detroit, MI,** )  
**Employer** )

---

**Docket No. 06-1317  
Issued: May 3, 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  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 17, 2006 appellant filed a timely appeal from an April 21, 2006 decision of the Office of Workers' Compensation Programs which denied her request for reconsideration because it was untimely filed and did not establish clear evidence of error. As there is no merit decision within one year of the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim.<sup>1</sup> Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction to review the April 21, 2006 decision.

**ISSUE**

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

---

<sup>1</sup> 20 C.F.R. § 501.2(c).

## **FACTUAL HISTORY**

This case has previously been before the Board. In a September 13, 1999 decision, the Board found that the Office met its burden of proof to terminate appellant's compensation benefits on April 8, 1996 and that she did not meet her burden of proof to establish that she had any disability after April 8, 1996 causally related to her employment injury.<sup>2</sup> On March 2, 2000 the Board denied appellant's petition for reconsideration. The law and the facts of the previous Board decisions and orders are incorporated herein by reference.

On June 21, 2000 appellant requested reconsideration with the Office, maintaining that the reports of Dr. Michael E. Kosinski, a Board-certified orthopedic surgeon, who provided an impartial examination, contained errors. She also submitted medical evidence. In a July 14, 2000 decision, the Office denied appellant's reconsideration request. On December 5, 2005 appellant again requested reconsideration, arguing that the Office misrepresented the credentials of Dr. Kosinski and that his opinion was not rationalized. By decision dated April 21, 2006, the Office denied appellant's reconsideration request on the grounds that 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.<sup>3</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>4</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>5</sup> Office procedures state that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth under section 10.607 of Office regulations,<sup>6</sup> if the claimant's application for review shows "clear evidence of error" on the part of the Office. 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.<sup>7</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

---

<sup>2</sup> Docket No. 98-203 (issued September 13, 1999).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 20 C.F.R. § 10.607(b); *see Gladys Mercado*, 52 ECAB 255 (2001).

<sup>5</sup> *Cresenciano Martinez*, 51 ECAB 322 (2000).

<sup>6</sup> 20 C.F.R. § 10.607.

<sup>7</sup> *Alberta Dukes*, 56 ECAB \_\_\_\_ (Docket No. 04-2028, issued January 11, 2005).

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>8</sup>

### ANALYSIS

As more than one year had elapsed from the date of issuance of the September 13, 1999 Board decision, the most recent merit decision in this case, appellant's request for reconsideration on December 6, 2005 was untimely filed. The one-year time limitation on reconsideration requests begins to run subsequent to any merit decisions on the issues, including any such decision of the Board.<sup>9</sup> Consequently, appellant must demonstrate clear evidence of error by the Office in denying her claim for compensation.<sup>10</sup>

The Board also finds that appellant failed to establish clear evidence of error with her reconsideration request. On reconsideration, she asserted that the Office misrepresented Dr. Kosinski's credentials. A search of the online medical directories of both the American Board of Medical Specialties and the American Board of Orthopedic Surgery demonstrates that Dr. Kosinski is Board-certified in orthopedic surgery,<sup>11</sup> the appropriate medical specialty to assess appellant's condition, accepted for lumbosacral sprain and ruptured discs. Appellant further maintained that Dr. Kosinski's opinion was not rationalized. This argument is duplicative of arguments raised in her June 21, 2000 reconsideration request. In the September 13, 1999 decision, the Board reviewed Dr. Kosinski's opinion and determined that it was well rationalized. These arguments are therefore insufficient to establish clear evidence of error.<sup>12</sup> Appellant also submitted a September 4, 1986 report from Dr. Rachel B. Keith. This report, however, was previously of record and, therefore, duplicative and is insufficient to establish clear evidence of error.<sup>13</sup>

In accordance with its internal guidelines and with Board precedent, the Office properly performed a limited review of the evidence and argument submitted by appellant with her December 6, 2005 reconsideration request to ascertain whether it demonstrated clear evidence of

---

<sup>8</sup> *Nancy Marcano*, 50 ECAB 110 (1998).

<sup>9</sup> *Odell Thomas*, 42 ECAB 405 (1991).

<sup>10</sup> 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB \_\_\_\_ (Docket No. 05-1637, issued October 18, 2005).

<sup>11</sup> The websites are located at: <http://www.abms.org/> and <https://www.abos.org/default.aspx> respectively.

<sup>12</sup> *Nancy Marcano*, *supra* note 8.

<sup>13</sup> *Id.*

error. The Office correctly determined that it did not and thus properly denied appellant's untimely request for reconsideration of the merits of her claim.<sup>14</sup>

**CONCLUSION**

The Board finds that, as appellant's December 6, 2005 reconsideration request was not timely filed and she failed to establish clear evidence of error, the Office properly denied a merit review of her claim in its April 21, 2006 decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 21, 2006 be affirmed.

Issued: May 3, 2007  
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

---

<sup>14</sup> *Supra* note 10.