

light-duty work with restrictions. The Office accepted appellant's claim for right thumb tenosynovitis.

On April 26, 2006 appellant filed a claim for disability beginning April 7, 2006. By decision dated July 10, 2006, the Office denied appellant's claim for a recurrence of disability.

In a letter dated and postmarked July 16, 2007, appellant filed a request for reconsideration. Medical evidence previously considered was submitted to the record.

By decision dated July 24, 2007, the Office denied appellant's request for reconsideration on the grounds that it was not timely filed within one year of the last merit decision on July 10, 2006 and the medical evidence failed to show clear evidence of error.¹

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 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

¹ The first paragraph of the July 24, 2007 decision contains an error regarding the date that appellant submitted her request for reconsideration.

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 247 (2005).

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).

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

The merits of appellant's case are not before the Board. Her request for reconsideration was dated July 16, 2007. As this request was filed more than one year after the Office's July 10, 2006 merit decision, it is not timely.¹⁴ The Office must therefore make a determination as to whether appellant demonstrated clear evidence of error in her untimely request for reconsideration.

The Board finds that the Office properly denied appellant's untimely request for reconsideration on the grounds that the evidence failed to demonstrate clear evidence of error in the July 10, 2006 merit decision, denying her claim for a recurrence of disability on April 7, 2006. Appellant submitted notes dated May 10, 2002 to December 1, 2003 and reports dated February 18 to September 19, 2005 from a Dr. William A. Heller. These notes predate the claimed recurrence of disability on April 7, 2006. As such, they do not demonstrate clear evidence of error in the denial of the April 7, 2006 claim. In a July 11, 2006 report, Dr. Heller diagnosed right thumb recurrent stenosing tenosynovitis and recommended light duty.¹⁵ On July 25, 2006 he stated that appellant's right thumb tenosynovitis had resolved. Appellant was discharged from care and could perform her regular work duties. However, Dr. Heller did not address the underlying issue of whether appellant sustained a recurrence of disability on April 7, 2006 causally related to her accepted right thumb tenosynovitis. Therefore, his reports do not demonstrate clear evidence of error in the July 10, 2006 merit decision. In a disability certificate dated August 9, 2006, Dr. Alter indicated that appellant was totally disabled from July 31 to August 9, 2006 due to de Quervain's tenosynovitis. In a September 25, 2006 disability certificate and November 28, 2006 report, he stated that appellant was totally disabled from September 14 to 27, 2006 due to de Quervain's tenosynovitis, epicondylitis and back pain. In a

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 *Howard Y. Miyashiro*, 51 ECAB 253 (1999).

¹⁵ A portion of the report is illegible.

January 12, 2007 disability certificate, Dr. Alter diagnosed de Quervain's tenosynovitis and diffuse musculoskeletal pain and indicated that appellant was totally disabled from January 4 to 12, 2007. In a March 23, 2007 certificate, he indicated that appellant was totally disabled from March 15 to 16, 2007 due to tenosynovitis and epicondylitis. The medical evidence from Dr. Alter does not address the issue of whether appellant had a recurrence of disability on April 7, 2006 causally related to her accepted right thumb tenosynovitis. Therefore, it does not demonstrate clear evidence of error in the July 10, 2006 merit decision.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration on the grounds that it was untimely and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 24, 2007 is affirmed.

Issued: April 18, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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