

failed to establish that he sustained a medical condition causally related to factors of his employment.

The Office developed additional medical evidence submitted by appellant. On November 4, 2005 it accepted reactive airway disease as causally related to his employment. In a November 4, 2005 decision, the Office found that appellant had no periods of disability caused by his accepted reactive airway disease. It also denied his claim for a cardiac condition as causally related to his employment.

On December 16, 2005 appellant requested a review of the written record by the Branch of Hearings and Review. By decision dated January 30, 2006, the Office denied his request for a review of the written record because it was not timely filed within 30 days of the November 4, 2005 decision.

On January 18, 2007 appellant requested reconsideration of the November 4, 2005 decision.

In a report dated May 12, 2004, Dr. William R. Beam, a specialist in internal medicine, reviewed appellant's medical history for several conditions and provided findings on physical examination. He diagnosed occupational-induced asthma, worsening airflow obstruction, obstructive sleep apnea, hypertension, dyslipidemia, osteoarthritis, gout, benign prostatic hypertrophy with a history of kidney stones, gastroesophageal reflux disease and ischemic cardiomyopathy with coronary artery disease status post myocardial infarction and bypass surgery. Dr. Beam stated that there had been a deterioration in spirometry (pulmonary function) over the past one or two years compared to previous pulmonary function tests. He noted that appellant attributed his worsening pulmonary function to exposure to toxic agents at work.

Appellant submitted copies of general articles on occupational asthma and chronic obstructive pulmonary disease printed from the internet. He also submitted evidence previously of record.

By decision dated November 8, 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 November 4, 2005 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

¹ Subsequent to the November 8, 2007 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

² 5 U.S.C. § 8128(a).

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

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 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. His request for reconsideration was dated January 18, 2007. As this request was made more than one year after the Office's

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).

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).

November 4, 2005 merit decision, it was not timely. The issue to be determined is whether appellant demonstrated clear evidence of error in his 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 November 4, 2005 merit decision.

Dr. Beam diagnosed a number of medical conditions including coronary artery disease and "occupational-induced" asthma. He noted that appellant attributed a worsening pulmonary function during the past one or two years to exposures to toxic agents at work. However, as noted, it is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error. Dr. Beam addressed only appellant's belief regarding causal relationship. He did not provide adequate medical rationale explaining how appellant's asthma and coronary artery disease were related to factors of his federal employment. Therefore, Dr. Beam's report does not raise a substantial question as to the correctness of the Office's November 4, 2005 decision or demonstrate clear evidence of error.

Appellant submitted copies of general articles on occupational asthma and chronic obstructive pulmonary disease. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.¹⁴ Therefore, these articles do not demonstrate clear evidence of error in the November 4, 2005 merit decision.

For these reasons, the Office properly denied appellant's request for reconsideration.

CONCLUSION

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

¹⁴ *William C. Bush*, 40 ECAB 1064 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 8, 2007 is affirmed

Issued: August 13, 2008
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