

FACTUAL HISTORY

This is the third appeal in this case.¹ By decision dated December 26, 2007, the Board affirmed a June 20, 2007 Office decision which denied appellant's request for reconsideration on the grounds that it was not timely filed and failed to establish clear evidence of error. By decision dated November 1, 2005, the Board affirmed a June 10, 2005 decision which terminated appellant's wage-loss compensation and medical benefits.² The facts of the case as set forth in the Board's decisions are incorporated herein by reference.

On February 13, 2008 appellant requested reconsideration and submitted an October 20, 2006 report from Dr. Martin Fritzhand, MD, which was previously of record. This medical report was considered by the Office in its June 20, 2007 decision and by the Board in its December 26, 2007 decision.

By decision dated March 27, 2008, the Office denied appellant's request for reconsideration on the grounds that the request was untimely and failed to show clear evidence of error.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act³ does not entitle a claimant to a review of an Office decision as a matter of right.⁴ This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.⁵ 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.⁶ 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).⁷

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

¹ Docket No. 07-1884 (issued December 26, 2007); Docket No. 05-1517 (issued November 1, 2005). On May 7, 2003 appellant, then a 57-year-old tractor trailer operator, filed a claim for a traumatic injury that occurred while he was unloading a truck. The Office accepted his claim for a low back strain and sciatica.

² Following the Board's November 1, 2005 decision, the Office issued a March 7, 2007 decision denying appellant's request for an oral hearing.

³ 5 U.S.C. § 8128(a).

⁴ *Thankamma Mathews*, 44 ECAB 765 (1993).

⁵ *Id.* at 768.

⁶ 20 C.F.R. § 10.607; *see also Alberta Dukes*, 56 ECAB 247 (2005).

⁷ *Thankamma Mathews*, *supra* note 4 at 769.

face, erroneous.⁸ To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.⁹ The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error.¹⁰ Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.¹¹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹² 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.¹³ 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.¹⁴

ANALYSIS

The merits of appellant's case are not before the Board. His request for reconsideration was dated February 13, 2008, more than one year after the Office's June 10, 2005 merit decision, and is therefore not timely. The issue to be determined is whether appellant demonstrated clear evidence of error in his untimely request for reconsideration.

The record reflects that the Office's June 10, 2005 merit decision terminated appellant's wage-loss compensation and medical benefits on the grounds that his work-related disability and need for medical treatment had ceased. With his February 13, 2008 request for reconsideration, appellant submitted a copy of an October 20, 2006 medical report from Dr. Fritzhand that had previously been considered by the Office in its June 20, 2007 decision. This evidence is therefore duplicative of that already of record. It does not raise a substantial question concerning the correctness of the Office's decision and is insufficient to establish clear evidence of error. Dr. Fritzhand's report was previously considered by the Office and the Board and does not raise a substantial question as to the correctness of the Office's June 10, 2005 merit decision or demonstrate clear evidence of error.

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

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

⁹ *Dean D. Beets*, 43 ECAB 1153 (1992).

¹⁰ *Leona N. Travis*, 43 ECAB 227 (1991).

¹¹ *Darletha Coleman*, 55 ECAB 143 (2003).

¹² *Leona N. Travis*, *supra* note 10.

¹³ *Darletha Coleman*, *supra* note 11.

¹⁴ *Pete F. Dorso*, 52 ECAB 424 (2001).

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 in the June 10, 2005 Office merit decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 27, 2008 is affirmed.

Issued: December 17, 2008
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