United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
and	)	**Docket No. 07-1865**
	)	**Issued: January 23, 2008**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, North Cascades National Park, WA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 6, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 31, 2007 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The last merit decision of record was the Office's October 25, 2005 decision. Because more than one year has elapsed between the last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits on the grounds that her request was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On July 15, 2005 appellant, then a 23-year-old volunteer intern, filed an occupational disease claim alleging that she sustained a bilateral knee condition in the performance of duty.

In a September 23, 2005 letter, the Office requested additional information including additional factual information and a comprehensive medical report. Appellant responded in an October 24, 2005 letter describing the type of work performed that she believed contributed to her knee condition. No medical evidence was submitted.

In an October 27, 2005 decision, the Office denied appellant's claim, finding that there was evidence that the claimed work events occurred but no medical evidence of a diagnosed condition in connection with her employment.

Medical documentation was subsequently received by the Office. In an August 30, 2005 report, Dr. Marshall Anderson noted that appellant complained of bilateral knee pain while hiking and climbing trails during her work as an intern. He diagnosed patellofemoral syndrome in both knees. In an August 31, 2005 evaluation report, a physical therapist noted that appellant reported the onset of right knee pain one to two months before with an increase in backpacking activity while working as an intern for the National Parks System. In a September 2, 2005 attending physician's report, Dr. Anderson checked the "yes" box indicating that he believed that appellant's condition was caused or aggravated by an employment activity and stated that it was due to "repetitive use of knees or prolonged hiking and climbing." In a September 21, 2005 report, a physical therapist stated that appellant was performing light to regular-duty work with no hiking. On January 25, 2007 the Office received two additional occupational disease claims, dated July 29 and August 30, 2005, for appellant's knee condition.

On May 18, 2007 appellant requested reconsideration. She acknowledged that her request was not within one year and stated that she did not know that she needed to send in the reconsideration form in addition to the medical information.

On May 31, 2007 the Office denied appellant's request for reconsideration on the grounds that the request was untimely and did not present clear evidence of error.

LEGAL PRECEDENT

The Office, through regulation, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of the Federal Employees' Compensation Act.[1] 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.[2] 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.[3] The Office procedures state

[1] 5 U.S.C. §§ 8101-8193.

[2] 20 C.F.R. § 10.607; *see also Alan G. Williams*, 52 ECAB 180 (2000).

[3] *Veletta C. Coleman*, 48 ECAB 367 (1997).

that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the claimant's application for review shows clear evidence of error on the part of the Office.[4] 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.[5]

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.[6] It is not enough merely to show that the evidence could be construed so 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 not only be of sufficient probative value to create a conflict in medical opinions 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.[7] 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.[8]

ANALYSIS

The Office properly determined that appellant failed to file a timely application for review. The Office's procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.[9] In this case, appellant's May 18, 2007 letter requesting reconsideration was submitted more than one year following the last merit decision of record, October 27, 2005. Therefore, it was untimely. Consequently, appellant must demonstrate clear evidence of error by the Office in denying her occupational disease claim.[10]

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[4] *See Gladys Mercado*, 52 ECAB 255 (2001). Section 10.607(b) provides: The Office will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of it in its most recent decision. The application must establish, on its face, that such decision was erroneous. 20 C.F.R. § 10.607(b).

[5] *See Nelson T. Thompson*, 43 ECAB 919 (1992).

[6] *Leon J. Modrowski*, 55 ECAB 196 (2004); *Dorletha Coleman*, 55 ECAB 143 (2003).

[7] *Id.*

[8] *Pete F. Dorso*, 52 ECAB 424 (2001); *John Crawford*, 52 ECAB 395 (2001).

[9] *Veletta C. Coleman*, *supra* note 3.

[10] 20 C.F.R. § 10.607(b); *Donna M. Campbell*, 55 ECAB 241 (2004).

Appellant has not established clear evidence of error. Prior to the October 25, 2005 decision she had not submitted any medical evidence to support her claim. After the decision, the Office received medical information from Dr. Anderson who diagnosed appellant with patellofemoral strain and indicated that it was related to her employment by checking a box adding that it was due to "repetitive use of the knee or prolonged hiking and climbing." There is no rationalized medical evidence that appellant's condition is related to her employment sufficient to establish clear evidence that the Office's decision was in error. Dr. Anderson noted appellant's repetitive use of the knees for prolonged hiking and climbing and checked a box indicating that appellant's employment activities were the cause of her condition. A physician's opinion supporting causal relationship consisting only of checking "yes" to a form question is insufficient to establish a causal relationship.[11] Medical evidence generally supporting a claim is insufficient to establish clear evidence of error in the denial of that claim. Appellant has not established with clear evidence that the Office erred in finding no causal relation between her knee condition and her employment.

Under the clear evidence of error standard it is not enough that evidence is merely supportive of the claim or can be construed to provide a contrary conclusion. It must be of sufficient probative valued to shift the weight of the evidence in favor of appellant and raise a substantial question as to the correctness of the merits of the Office's decision.[12] This is not the case here. The evidence submitted does not *prima facie* establish that appellant sustained an occupational disease in performance of duty.

CONCLUSION

The Board finds that appellant's request for reconsideration was untimely filed and did not establish clear evidence of error.

[11] *Sedi L. Graham*, 57 ECAB ___ (Docket No. 06-135, issued March 15, 2006).

[12] *See Veletta C. Coleman*, *supra* note 3.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 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