

receiving a threatening document in his box. The Office accepted the claim for a single episode of a major depressive disorder. Appellant stopped work on August 8, 2003 and did not return.¹

In a March 11, 2004 work capacity evaluation form, Dr. Kamou Moyenda, a treating psychiatrist, found that appellant was capable of working an eight-hour day beginning June 1, 2004. In a report dated March 11, 2004, Dr. Moyenda noted that, as a result of appellant's post-traumatic stress disorder, he had decreased attention span and concentration. He released appellant to work beginning June 1, 2004 with no restrictions.

On December 9, 2004 the Office referred appellant to Dr. Ali Ahmadi, a Board-certified psychiatrist, for a second opinion evaluation. On December 13, 2004 Dr. Ahmadi reviewed the medical and factual evidence and set forth findings on examination. He found that appellant's depression had not resolved but he was capable of performing his usual employment duties. Dr. Ahmadi also concluded that appellant had no restrictions or ongoing limitation due to his accepted condition.

On February 16, 2005 the Office issued a notice of proposed termination of wage-loss benefits, which was finalized and became effective on March 23, 2005.

On March 28 and June 4, 2008 appellant's attorney requested reconsideration of the March 23, 2005 decision. Appellant submitted a May 13, 2008 report from Dr. Ronnie Blount, a treating physician, who diagnosed post-traumatic stress disorder and major depression which he attributed to the August 8, 2003 employment injury. Dr. Blount concluded that appellant was totally disabled due to this condition.

By decision dated June 20, 2008, the Office denied appellant's request for review on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

The Federal Employees' Compensation Act² provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must file his or her application for review within one year of the date of that decision.⁴ The Board has found that the imposition of the one-year limitation

¹ The record shows that appellant had a heart attack on February 1, 2004.

² 5 U.S.C. § 8101 *et seq.*

³ 20 C.F.R. § 10.605.

⁴ *Id.* at § 10.607(a).

does not constitute an abuse of the discretionary authority granted the Office under section 8128(a) of the Act.⁵

Title 20 of the Code of Federal Regulations, section 10.607(b) provides that the Office will consider an untimely application only if it demonstrates clear evidence of error by it in its most recent merit decision. 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 it 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 it. 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. The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of the Office such that it abused its discretion in denying merit review in the face of such evidence.⁷

ANALYSIS

The Office accepted that on August 8, 2003 appellant sustained a single major depressive episode as a result of receiving a threatening document in a box. In a March 11, 2004 report, Dr. Moyenda, an attending psychiatrist, advised that appellant was capable of working an eight-hour day beginning June 1, 2004. In a December 13, 2004 report, Dr. Ahmadi, a second opinion Board-certified psychiatrist, concluded that appellant was capable of performing his usual employment duties. In a March 23, 2005 decision, the Office terminated appellant's entitlement to wage-loss compensation effective that day.

The Board finds that the Office properly determined that appellant filed an untimely request for reconsideration. Appellant's reconsideration request was filed on March 28, 2008, more than one year after the Office's March 23, 2005 decision. Therefore, he must demonstrate clear evidence of error on the part of the Office in issuing this decision.

The Board finds that appellant has not established clear evidence of error on the part of the Office in its March 24, 2006 decision. Appellant did not submit the type of positive, precise and explicit evidence which manifests on its face that the Office committed an error.

⁵ 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989)

⁶ *See Alberta Dukes*, 56 ECAB 247 (2005); *see also Leon J. Modrowski*, 55 ECAB 196 (2004).

⁷ *See Alberta Dukes*, *supra* note 6.

Appellant submitted a May 13, 2008 report from Dr. Blount, an attending physician, who diagnosed major depression and post-traumatic stress disorder and found that appellant, was totally disabled. The medical evidence from Dr. Blount is not sufficient to *prima facie* shift the weight of the evidence. He did not provide an accurate factual background, as there is no discussion as to how the injury occurred. Dr. Blount merely noted the date of the August 8, 2003 incident without any description as to what occurred. He advised that appellant was totally disabled due to depression and post-traumatic stress disorder resulting from an August 8, 2003 incident without providing any medical rationale in support of his stated conclusion. The Board notes that even if Dr. Blount were to provide an opinion sufficient to create a conflict with the second opinion physician Dr. Ahmadi, this would not establish clear evidence of error.⁸

The evidence submitted by appellant does not raise a substantial question concerning the correctness of the Office's March 23, 2005 decision. It properly determined that appellant did not establish clear evidence of error in that decision.

CONCLUSION

Appellant's application for reconsideration was untimely filed and failed to show clear evidence of error.

⁸ *D.G.*, 59 ECAB ___ (Docket No. 08-137, issued April 14, 2008); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989) (the submission of a detailed well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 20, 2008 is affirmed.

Issued: April 2, 2009
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