

disc disease at C4-5 and C6-7. On September 7, 2004 she first realized that her cervical condition was caused by a change in her modified work duties.

By decision dated December 8, 2004, the Office denied appellant's claim. It found the medical evidence insufficient to establish that her cervical condition was causally related to the established work-related duties. By letter dated December 15, 2004, she requested reconsideration.

In a December 30, 2004 decision, the Office denied appellant's request for reconsideration. It neither raised substantive legal questions nor included new and relevant evidence and, thus, was insufficient to warrant a merit review of her claim. By letter dated April 25, 2005, appellant requested reconsideration. She submitted an August 30, 2004 magnetic resonance imaging scan which demonstrated, among other things, multilevel cervical spinal stenosis resulting from advanced degenerative disc disease and spondylosis most pronounced at C4-5 and C6-7.

By decision dated June 23, 2005, the Office denied modification of the December 30, 2004 decision. It found the medical evidence insufficient to establish that appellant sustained a cervical condition causally related to the established work-related duties. By letter dated March 31, 2008, she again requested reconsideration. Appellant did not submit any additional factual or medical evidence with her request.

In a decision dated July 11, 2008, the Office found that appellant's March 31, 2008 letter requesting reconsideration was dated more than one year after the June 23, 2005 merit decision, and was untimely. It further found that she did not submit any evidence establishing clear evidence of error in the Office's denial of her claim.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 The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a). Section 10.607(a) of its implementing regulations provides that an application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁴

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

¹ On appeal, appellant submitted additional medical evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

² 5 U.S.C. § 8128(a).

³ *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁴ 20 C.F.R. § 10.607(a).

merit decision. The reconsideration request must establish that the Office's decision was, on its face, erroneous.⁵

To establish clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by the Office.⁶ The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error.⁷ Evidence that does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.⁸ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.⁹ 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.¹⁰

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.¹¹

ANALYSIS

The Board finds that appellant failed to file a timely application for review of the June 23, 2005 merit decision. In implementing the one-year time limitation, the Office's procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues.¹²

The most recent merit decision was issued by the Office on June 23, 2005. It found that appellant's cervical condition was not causally related to the established work-related duties. As her March 31, 2008 letter requesting reconsideration was made more than one year after this decision, it was not timely filed.

Appellant did not submit any additional factual or medical evidence with her untimely reconsideration request. She has made no showing that the Office committed clear evidence of error in finding that she did not sustain a cervical condition causally related to the accepted employment-related duties. For these reasons, the Board finds that she has not established clear evidence of error on the part of the Office.

⁵ *Id.* at § 10.607(b); *see also Alberta Dukes*, 56 ECAB 247 (2005).

⁶ *Nancy Marcano*, 50 ECAB 110, 114 (1998).

⁷ *Leona N. Travis*, 43 ECAB 227, 241 (1991).

⁸ *Darletha Coleman*, 55 ECAB 143 (2003).

⁹ *Leona N. Travis*, *supra* note 7.

¹⁰ *See Nelson T. Thompson*, 43 ECAB 919 (1992).

¹¹ *Pete F. Dorso*, 52 ECAB 424 (2001).

¹² *Larry L. Litton*, 44 ECAB 243 (1992).

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration on the grounds that it was not timely filed and failed to establish clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the July 11, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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