

her condition and its relation to her federal employment on November 11, 1996. Appellant attributed her condition to sorting bundles of magazines to various carrier routes.

By decision dated May 1, 2006, the Office denied appellant's claim because the evidence of record was insufficient to establish her alleged medical condition was related to an established work-related event.

By letter dated January 28, 2008, appellant requested reconsideration. With her request appellant submitted a November 1, 2005 medical note signed by Dr. James A. Wilkes, a Board-certified orthopedic surgeon, who stated a diagnosis of bilateral carpal tunnel syndrome and recommended appellant undergo nerve conduction studies. On November 3, 2005 Dr. Wilkes reporting the results from a nerve conduction study, again proffered a diagnosis of bilateral carpal tunnel. In a January 10, 2008 medical note, he stated that, while he had not seen appellant for quite some time, he felt that there was a reasonable degree of medical probability that appellant's carpal tunnel was attributable to the repetitiveness of the daily work appellant performs.

In her request, appellant explained that this medical evidence was previously not available to her. At the time she filed her claim, she had an outstanding unpaid medical bill owed Dr. Wilkes which was in collection. Appellant reported that the clinic's policy not to deal with clients with any outstanding debts and therefore she was unable to obtain these medical notes until recently, when she paid Dr. Wilkes' bill.

By decision dated March 4, 2008, the Office denied appellant's request for reconsideration as untimely and because she 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 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.⁵

² 5 U.S.C. § 8101 *et seq.*

³ 20 C.F.R. § 10.605.

⁴ *Id.* at § 10.607(a).

⁵ *Veletta C. Coleman*, 48 ECAB 367 (1997); *Larry L. Lilton*, 44 ECAB 243 (1992).

Section 10.607(b) provides that the Office will consider an untimely application only if it demonstrates clear evidence of error by the Office 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 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. 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.⁷

ANALYSIS

The merits of appellant's case are not before the Board. Her request for reconsideration was received by the Office on February 5, 2008, more than one year after the May 1, 2006 merit decision. Therefore it was not timely. The only remaining issue then is whether appellant demonstrated clear evidence of error in her untimely request for reconsideration.

The underlying issue in this case is whether appellant sustained a carpal tunnel syndrome in the performance of duty. The Office denied appellant's claim because the record lacked competent probative medical evidence. With her untimely request for reconsideration, she submitted evidence that proffered a diagnosis of carpal tunnel syndrome. This evidence included the results from a nerve conduction study, further bolstering a diagnosis of bilateral carpal tunnel.

This evidence however was not sufficient to manifest on its face that appellant sustained the carpal tunnel syndrome as a result of her employment duties. This evidence did not even offer a rationalized medical opinion causally relating the diagnosed condition to appellant's employment.

Therefore the new evidence submitted by appellant did not demonstrate clear error in the merit decision denying the claim.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration as the request was untimely filed and the evidence submitted with her untimely request did not demonstrate clear evidence of error in the March 4, 2008 Office decision.

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

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 4, 2008 is affirmed.

Issued: May 4, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board