

FACTUAL HISTORY

On March 21, 1993 appellant, then a 52-year-old electronics technician, filed a claim for an occupational injury. He alleged that he developed chronic myelocytic leukemia due to exposure to asbestos, mercury, vehicle exhaust fumes, welding and paint fumes, cleaning chemicals and other toxic materials at work. By decisions dated January 23, 2002, March 19, 2003, May 4, 2004, April 11 and May 18, 2006, March 7, 2007 and March 24, 2008, the Office denied appellant's claim.

On March 19, 2009 appellant requested reconsideration. He submitted a copy of a March 19, 2009 letter to his Congressman requesting that he submit a reconsideration request on his behalf and a March 19, 2009 inquiry from the Congressman to the Office. No medical evidence was submitted.

By decision dated May 14, 2009, the Office denied appellant's request for reconsideration on the grounds that the request was untimely and failed to establish clear evidence of error in the last merit decision dated March 7, 2007.

LEGAL PRECEDENT

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, 20 C.F.R. § 10.607 provides that an application for reconsideration must be sent within one year of the date of the Office decision for which review is sought. The Office will consider an untimely application only if the application demonstrates clear evidence on the part of the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.² 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.³

ANALYSIS

The merits of appellant's case are not before the Board. His request for reconsideration was dated March 19, 2009, more than one year after the Office's March 7, 2007 merit decision and, therefore, is not timely. The issue to be determined is whether appellant demonstrated clear evidence of error in the Office's March 7, 2007 decision.

The Office's merit decision on March 7, 2007 denied appellant's claim for leukemia because the medical evidence was insufficient to establish causal relationship between his condition and factors of his federal employment. The two March 19, 2009 letters submitted with appellant's request for reconsideration from appellant and his Congressman were not medical evidence addressing the issue of causal relationship. As such, the letters did not raise a

² 20 C.F.R. § 10.607.

³ *Robert F. Stone*, 57 ECAB 292 (2005); *Leon D. Modrowski*, 55 ECAB 196 (2004).

substantial question as to the correctness of the Office's March 7, 2007 merit decision or establish clear evidence of error.

Because appellant's untimely request for reconsideration did not demonstrate clear evidence of error in the March 7, 2007 merit decision, the Office properly denied his untimely request for reconsideration.

On appeal, appellant argues the merits of his claim and contends that the Office did not properly develop it. As noted, the March 7, 2007 merit decision is not within the Board's jurisdiction. The issue is whether he submitted with his request for reconsideration medical evidence establishing clear evidence of error in the Office's March 7, 2007 merit decision. Appellant submitted no medical evidence. The Office properly denied his untimely reconsideration request in its May 14, 2009 decision.

CONCLUSION

The Board finds that the Office properly denied his request for reconsideration on the grounds that it was untimely and failed to demonstrate clear evidence of error in the March 7, 2007 merit decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 14, 2009 is affirmed.

Issued: September 15, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board