

FACTUAL HISTORY

On February 21, 1999 appellant, then a 49-year-old clerk, filed a claim alleging that on that date he sustained a left foot and ankle fracture in the performance of duty. He stopped work on February 22, 1999. The Office accepted the claim for a left ankle sprain and placed appellant on the periodic rolls beginning April 8, 1999. Appellant returned to limited-duty employment on April 18, 2000 for four hours per day.

By decision dated October 25, 2000, the Office found that appellant failed to establish a recurrence of disability on May 13, 2000 causally related to his February 21, 1999 work injury. Following a review of the written record, on July 1, 2001 an Office hearing representative affirmed the October 25, 2000 decision. The hearing representative determined that the medical evidence did not show that appellant was totally disabled from his part-time work beginning May 2000.

On August 3, 2009 appellant, through his attorney, requested reconsideration of the July 11, 2001 hearing representative's decision.² Counsel argued that the medical evidence established that he sustained a recurrence of disability due to his February 21, 1999 employment injury. He also maintained that there was a change in the nature and extent of appellant's employment-related condition.

By decision dated October 13, 2009, the Office denied appellant's request for reconsideration on the grounds that it was untimely and insufficient to show clear evidence of error. It noted that on reconsideration he generally argued that he had met his burden of proof to show a recurrence of disability but did not cite any particular medical evidence supporting his allegation or raise any specific argument identifying an aspect of its decision that was erroneous.

On appeal appellant's attorney argues that his request for reconsideration establishes that appellant sustained an employment-related recurrence of disability beginning May 2000.

LEGAL PRECEDENT

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a) of the Federal Employees' Compensation Act.³ 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.⁴

² Appellant's attorney also requested reconsideration of an October 4, 1996 Office decision issued in another file number. The Office's October 13, 2009 decision only addressed his request for reconsideration of the July 11, 2001 decision issued under the current file number. It noted that it would issue a separate decision on the request for reconsideration of the October 4, 1996 decision.

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.607.

The term “clear evidence of error” is intended to represent a difficult standard. The claimant must present evidence which on its face shows that the Office made an error (for example, proof of a miscalculation in a schedule award). Evidence such as a detailed, well-rationalized medical report which, if submitted prior to the Office’s denial, would have created a conflict in medical opinion requiring further development, is not clear evidence of error and would not require a review of the case on the Director’s own motion.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.⁶

ANALYSIS

The Office properly determined that appellant failed to file a timely application for review. Its procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision.⁷ A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.⁸ As appellant’s August 3, 2009 request for reconsideration was submitted more than one year after July 11, 2001, the date of the last merit decision of record, it was untimely. Consequently, he must demonstrate clear evidence of error by the Office in denying his claim for compensation.⁹

In his request for reconsideration, appellant, through his attorney, argued that the medical evidence was sufficient to show that he sustained a recurrence of disability. Counsel further contended that the medical evidence established a change in the nature and extent of his work-related condition. Appellant, however, did not identify any specific error by the Office in evaluating the medical evidence or refer to any specific medical report as supporting that he sustained a recurrence of disability. The Office previously weighed the medical evidence and determined that it did not establish an employment-related recurrence of disability. Appellant must show by positive, precise and explicit evidence that the Office committed an error in finding that he did not establish a recurrence of disability.¹⁰ It is not enough to merely allege that the evidence could be construed to produce a different conclusion. The evidence must manifest on its face that the Office committed an error in finding that appellant failed to establish a recurrence of disability.¹¹ Appellant did not raise any substantial question concerning the

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (April 1991).

⁶ *Robert F. Stone*, 57 ECAB 292 (2005); *Leon D. Modrowski*, 55 ECAB 196 (2004); *Darletha Coleman*, 55 ECAB 143 (2003).

⁷ 20 C.F.R. § 10.607(a).

⁸ See *Robert F. Stone*, *supra* note 6.

⁹ 20 C.F.R. § 10.607(b); see *Debra McDavid*, 57 ECAB 149 (2005).

¹⁰ *G.H.*, 58 ECAB 183 (2006).

¹¹ *W.G.*, 60 ECAB ____ (Docket No. 08-2340, issued June 22, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

correctness of the Office's prior merit decision and thus failed to establish clear evidence of error.¹²

On appeal appellant's attorney argues that his request for reconsideration is sufficient to show a recurrence of disability beginning May 2000. As discussed, however, nothing in his August 3, 2009 request for reconsideration establishes, on its face, that the Office's July 11, 2001 decision was clearly erroneous. Consequently, counsel has not shown clear evidence of error.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration on the grounds that it was untimely and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the October 13, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 21, 2011
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

¹² R.C., 59 ECAB 546 (2008).