

Appellant contends on appeal that he was a federal employee at the time of the alleged injury.

FACTUAL HISTORY

On April 8, 1994 appellant, then a 32-year-old mailroom worker, filed a traumatic injury claim alleging that, on October 26, 1991, while employed as a temporary mailroom worker, he sustained injuries to his low back and upper right arm while moving mailbags. The employing establishment subsequently controverted the claim. In a May 5, 1994 memorandum, a human resource specialist advised that appellant had never been hired as an employee of the employing establishment. An investigation was made to determine whether appellant sustained an injury while taking a strength and stamina test for a job, but that the investigation found no documentation that appellant took the test or was employed for the Federal Government. Appellant completed the portion of the claim form for the employing establishment by answering most of the questions as non applicable.

By decision dated June 7, 1994, the Office denied appellant's claim finding that he had not established that he was a federal employee at the time of the alleged injury.

By letter received by the Office, on September 8, 1994, appellant requested a hearing. In a September 30, 1994 decision, the Office denied his request for a hearing as it was untimely filed.

On June 5, 1995 appellant requested reconsideration. He submitted a page from an unidentified text that discussed workers' compensation law involving tryouts for employment.

By decision dated July 10, 1995, the Office denied modification of the June 7, 1994 decision.

On August 24, 2005 appellant requested review of his case by the Board. By order dated October 3, 2005, the Board dismissed the appeal, finding that it was not timely filed.²

By letter received by the Office, on May 4, 2010, appellant requested reconsideration. He submitted the page from an unidentified book discussing workers' compensation and tryouts for employment.

In a May 14, 2010 decision, the Office denied appellant's request for reconsideration as it was not timely filed and did not establish clear evidence of error.

LEGAL PRECEDENT

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must file his application for review within one year of the date of that decision.³ The Board has found that the imposition of the one-year limitation does not constitute an abuse of the

² Docket No. 05-1761 (issued October 3, 2005).

³ 20 C.F.R. § 10.607(a).

discretionary authority granted the Office under section 8128(a) of the Federal Employees' Compensation Act.⁴

The Office, however, may not deny an application for review solely on the grounds that the application was not timely filed. When an application for review is not timely filed, the Office must nevertheless undertake a limited review to determine whether the application establishes clear evidence of error.⁵ Office regulations and procedure provide that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's application for review shows clear evidence of error on the part of the Office.⁶

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.⁷ The evidence must be positive, precise and explicit and must manifest on its face that the Office committed an error.⁸ Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.⁹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁰ 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.¹¹ 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 decision.¹²

ANALYSIS

The Board notes that the most recent merit decision was the July 10, 1995 Office decision that denied modification of a June 7, 1994 decision denying appellant's claim because he did not establish that he was a federal employee. Appellant filed his request for reconsideration on May 4, 2010, some 14 years after the last merit decision. As his request was filed over one year

⁴ 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

⁵ See 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁶ 20 C.F.R. § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3d (January 2004).

⁷ See *Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

⁸ See *Leona N. Travis*, 43 ECAB 227, 240 (1991).

⁹ See *Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

¹⁰ See *Leona D. Travis*, *supra* note 8.

¹¹ See *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

¹² *Leon D. Faidley, Jr.*, *supra* note 4.

after the decision from which he requested reconsideration, the Board finds that his request was not timely filed.

The Office properly proceeded to review appellant's request under the clear evidence of error standard and determined that he had not established clear evidence of error. The only evidence submitted with appellant's request for reconsideration was a page from an unidentified book discussing workers' compensation law and tryouts for employment. This document is not new evidence and was previously considered by the Office in the July 10, 1995 merit decision. The employing establishment noted that it had no record of appellant ever applying for a job and there was no documentation that he ever took the strength test. Accordingly, appellant has not submitted sufficient evidence to establish that the Office's denial of his claim was clearly erroneous or that raises a substantial question as to the correctness of the Office's determination. The term clear evidence of error is intended to represent a difficult standard.¹³

The Board finds that appellant has not submitted evidence sufficient to shift the weight of evidence in favor of his claim or raise a substantial question that the Office erred in denying his claim.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim on the grounds that his request was untimely filed and failed to demonstrate clear evidence of error.

¹³ *D.O.*, Docket No. 08-1057 (issued June 23, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 14, 2010 is affirmed.

Issued: March 18, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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