

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration as untimely filed and lacking clear evidence of error.

On appeal, appellant contends that he is entitled to compensation benefits for his total disability causally related to his accepted employment injuries.

FACTUAL HISTORY

This case has previously been before the Board.⁴ In the February 15, 2001 decision, the Board found that OWCP properly terminated appellant's compensation benefits effective March 1, 1998 on the grounds that he no longer had any disability causally related to his April 22, 1983 employment injuries. The facts of the case as set forth in the Board's prior decision are incorporated herein by reference.⁵ The facts and the history relevant to the present appeal are hereafter set forth.

On April 18, 2001 appellant requested reconsideration of the termination of his compensation benefits.

In a May 29, 2001 decision, OWCP denied appellant's request for reconsideration. It found that he failed to raise substantive legal questions or submit new and relevant evidence.

By letter dated September 18, 2010, appellant requested reconsideration. In an abdomen and a pelvis computerized tomography (CT) scan report dated September 8, 2010, Dr. Kush Singh, a Board-certified radiologist, stated that appellant had no acute intra-abdominal process. He had scattered sigmoid diverticulosis without evidence of diverticulitis. Appellant's appendix was normal and was filled with stool. The appendix was also mildly prominent in diameter proximally without surrounding inflammatory change. Appellant had no definite collecting system stone or obstruction bilaterally. He had hepatic cysts. Appellant also had bibasilar interstitial change and possible fibrosis. Dr. Singh questioned his prior asbestos exposure given the calcification within the left basilar pleura. Appellant had vascular calcification with infrarenal aortic ectasia measuring 2.3 centimeters in diameter. He also had prominent borderline pathologically enlarged bilateral inguinal lymph nodes that correlated with a physical examination.

Appellant submitted duplicate copies of reports dated June 27, 1983 through November 13, 1997 from Dr. Richard P. Reinerston, Dr. Howard I. Maibach, Dr. Emil A. Tanghetti and Dr. Sergei A. Grando, Board-certified dermatologists, which addressed his dermatitis condition, medical treatment and disability for work. He also submitted duplicate copies of correspondence to and from OWCP, the current and former presidents of the United

⁴ Docket No. 00-341 (issued February 15, 2001).

⁵ OWCP accepted that on April 23, 1983 appellant, then a 42-year-old marine mechanic, sustained solvent dermatitis and dermatographism when liquid spilled onto his arms while he was working on a pipe system. Appellant was terminated from the employing establishment on July 15, 1983 due to unauthorized absences.

States, congressional representatives and the employing, and prior OWCP decisions regarding the termination of his compensation benefits.

In an October 14, 2010 decision, OWCP denied appellant's September 18, 2010 request for reconsideration on the grounds that it was not timely filed and failed to establish clear evidence of error in the last merit decision dated February 15, 2001.

LEGAL PRECEDENT

Section 8128(a) of FECA⁶ does not entitle a claimant to a review of OWCP decision as a matter of right.⁷ OWCP, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a). Section 10.607(a) of OWCP's implementing regulations provide that an application for reconsideration must be sent within one year of the date of OWCP's decision for which review is sought.⁸

Section 10.607(b) states that OWCP will consider an untimely application for reconsideration only if it demonstrates clear evidence of error by OWCP in its most recent merit decision. The reconsideration request must establish that OWCP's decision was, on its face, erroneous.⁹

To establish clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by OWCP.¹⁰ The evidence must be positive, precise and explicit and must be manifest on its face that OWCP committed an error.¹¹ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.¹² It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹³ This entails a limited review by OWCP 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 OWCP.¹⁴

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

⁶ 5 U.S.C. § 8128(a).

⁷ *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁸ 20 C.F.R. § 10.607(a).

⁹ *Id.* at § 10.607(b).

¹⁰ *Nancy Marcano*, 50 ECAB 110, 114 (1998).

¹¹ *Leona N. Travis*, 43 ECAB 227, 241 (1991).

¹² *Richard L. Rhodes*, 50 ECAB 259, 264 (1999).

¹³ *Leona N. Travis*, *supra* note 11.

¹⁴ *See Nelson T. Thompson*, 43 ECAB 919 (1992).

the claimant and raise a substantial question as to the correctness of OWCP's decision.¹⁵ The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP such that OWCP abused its discretion in denying merit review in the face of such evidence.¹⁶

ANALYSIS

The Board finds that appellant did not file a timely request for reconsideration. OWCP procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original OWCP decision.¹⁷ However, a right to reconsideration within one year also accompanies any subsequent merit decision on the issues.¹⁸

The most recent merit decision in this case was the February 15, 2001 decision affirming OWCP's termination of appellant's compensation benefits on the grounds that he no longer had any employment-related disability. As appellant's September 18, 2010 letter requesting reconsideration by OWCP was made more than one year after the February 15, 2001 merit decision, the Board finds that it was not timely filed.

The Board finds that the evidence submitted by appellant in support of his September 18, 2010 request for reconsideration does not raise a substantial question as to the correctness of OWCP's termination of his compensation benefits or shift the weight of the evidence of record in his favor. Dr. Singh's September 8, 2010 abdomen and pelvis CT scan report is insufficient to show clear evidence of error as he did not address whether appellant had any disability causally related to the April 23, 1983 accepted work injuries. Evidence that is not germane to the issue on which the claim was denied is insufficient to demonstrate clear evidence of error.¹⁹

The duplicate medical reports from Dr. Reinerston, Dr. Maibach, Dr. Tanghetti and Dr. Grando were previously of record and considered by OWCP in its prior decisions do not establish that OWCP committed clear evidence of error in terminating appellant's compensation in 1998. The physicians addressed appellant's disability for work, but failed to provide adequate medical rationale explaining how exposure to a liquid substance on April 23, 1983 or the accepted skin conditions caused total disability for work. The Board finds that the medical reports resubmitted by appellant do not discharge his burden of showing clear evidence of error.

The duplicate copies of correspondence and prior OWCP decisions resubmitted by appellant are insufficient to *prima facie* shift the weight of the evidence in favor of his claim. The submission of factual evidence does not show clear evidence of error because it is not

¹⁵ *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

¹⁶ *Thankamma Mathews*, 44 ECAB 765, 770 (1993).

¹⁷ *Supra* note 8; *see A.F.*, 59 ECAB 714 (2008).

¹⁸ *D.G.*, 59 ECAB 455 (2008); *Robert F. Stone*, 57 ECAB 292 (2005).

¹⁹ *F.R.* Docket No. 09-575 (issued January 4, 2010).

relevant to the main issue in the present case, which is medical in nature and should be resolved by the submission of medical evidence.

The Board finds that the evidence submitted by appellant in support of his untimely request for reconsideration does not constitute positive, precise and explicit evidence, which manifests on its face that OWCP committed an error. Therefore, the Board finds that appellant failed to meet his burden of proof to show clear evidence of error on the part of OWCP.

Although appellant contended on appeal that, he continued to be disabled due to the employment-related injuries, the medical evidence, as discussed above, was not sufficient to shift the weight of the evidence in his favor and raise a substantial question as to the correctness of OWCP's decision terminating his compensation benefits.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration as untimely filed and lacking clear evidence of error.

ORDER

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

Issued: September 15, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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