

³ For OWCP decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3 (2008).

ISSUE

The issue is whether OWCP properly refused to reopen appellant's claim for reconsideration of the merits on the grounds that the request was untimely and failed to establish clear evidence of error.

FACTUAL HISTORY

On April 28, 1978 appellant filed a traumatic injury claim alleging that on April 26, 1978 he sustained injuries to his head and shoulder in the performance of duty. He was struck in the head by a metal door while bailing cardboard. Appellant stopped work on the date of injury and returned to full duty on April 27, 1978. OWCP accepted his claim for contusion of the left shoulder and scalp hematoma. On March 3, 1980 appellant filed a claim for recurrence of disability.

This case has previously been before the Board. In a December 11, 2006 decision, the Board affirmed OWCP's August 10, 2005 decision, finding that appellant failed to establish that he sustained a recurrence of disability in March 1980 that was causally related to his accepted April 26, 1978 employment injury.⁴ By decision dated February 20, 2009, the Board affirmed OWCP's July 15, 2008 decision denying appellant's request for reconsideration on the grounds that it was untimely and failed to establish clear evidence of error.⁵ By decision dated February 16, 2011, the Board affirmed OWCP's August 13, 2009 decision denying appellant's request for reconsideration on the grounds that it was untimely and failed to establish clear evidence of error.⁶ The facts and the law contained in the Board's prior decisions are incorporated herein by reference.

On January 19, 2012 appellant again requested reconsideration, contending that he timely filed all forms, including requests for reconsideration. In support of his request, he submitted three personal statements and copies of documents dated June 23, 1987 through May 10, 2005, which were previously received and considered by OWCP. In his June 15, 2011 statement, appellant contended that OWCP erred by withholding evidence. In a November 10, 2011 letter, he alleged that he had been physically and mentally abused because no one cared about his pain and suffering. Appellant also expressed his belief that he had been the subject of racial discrimination. On January 19, 2012 he stated that he had been making timely appeals since 1980, but has been given the runaround.

⁴ Docket No. 06-1337 (issued December 11, 2006). By order dated June 15, 2007, the Board denied appellant's petition for reconsideration. Docket No. 06-1337 (issued June 15, 2007). In an order dated April 16, 2008, the Board dismissed appellant's appeal of the December 11, 2006 decision on the grounds that he did not have the right to appeal from the final decision of the Board. Docket No. 07-2155 (issued April 16, 2008).

⁵ Docket No. 09-47 (issued February 20, 2009).

⁶ Docket No. 10-634 (issued February 16, 2011). In its February 16, 2011 decision, the Board also affirmed OWCP's June 26, 2009 merit decision denying appellant's recurrence claim in File No. xxxxxx397 and the August 14, 2009 nonmerit decision denying merit review in that case.

By decision dated April 27, 2012, OWCP denied appellant's request for reconsideration on the grounds that it was untimely and failed to establish clear evidence of error.

LEGAL PRECEDENT

FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.⁷ OWCP, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a). To be entitled to a merit review of an OWCP 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.⁸ The Board has found that the imposition of the one-year limitation does not constitute an abuse of the discretionary authority granted to OWCP under section 8128(a) of FECA.⁹

OWCP, 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, it must nevertheless undertake a limited review to determine whether the application establishes clear evidence of error.¹⁰ OWCP regulations and procedure provide that it 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 OWCP.¹¹

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹² The evidence must be positive, precise and explicit and must manifest on its face that OWCP committed an error.¹³ Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.¹⁴ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁵ 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.¹⁶ The Board makes an independent determination of whether a claimant has submitted clear evidence of error

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.607(a).

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

¹⁰ *See* 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

¹¹ *Id.* at § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3d (January 2004).

¹² *See Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

¹³ *See Leona N. Travis*, 43 ECAB 227, 240 (1991).

¹⁴ *See Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

¹⁵ *See M.L.*, Docket No. 09-956 (issued April 15, 2010). *See Leona N. Travis*, *supra* note 13.

¹⁶ *See Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

on the part of OWCP such that it abused its discretion in denying merit review in the face of such evidence.¹⁷

ANALYSIS

The Board finds that OWCP properly refused to reopen appellant's claim for reconsideration of the merits on the grounds that it was untimely and failed to establish clear evidence of error.

OWCP 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 OWCP decision.¹⁸ A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.¹⁹ As appellant's January 19, 2012 request for reconsideration was submitted more than one year after the date of the last merit decision of record on February 11, 2006, it was untimely. Consequently, he must demonstrate that OWCP committed error in denying his claim.²⁰

Appellant submitted three personal statements in which he alleged that OWCP had withheld evidence; he had been physically and mentally abused; he had been the subject of racial discrimination; and he had been making timely appeals since 1980, but had been given the runaround. These statements do not establish error on the part of OWCP. Rather, they merely repeat arguments considered previously, without offering any supporting evidence. Therefore, his contentions are insufficient to raise a substantial question concerning the correctness of OWCP's decision.

Appellant also submitted copies of documents dated June 23, 1987 through May 10, 2005. As these documents were previously received in the case record, they are cumulative and duplicative in nature²¹ and do not establish error on the part of OWCP.

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, he failed to meet his burden of proof to show clear evidence of error on the part of OWCP.

On appeal, appellant contends that he submitted sufficient evidence to establish his claim in a timely manner.

¹⁷ *Pete F. Dorso*, 52 ECAB 424 (2001).

¹⁸ 20 C.F.R. § 10.607(a).

¹⁹ *Robert F. Stone*, 57 ECAB 292 (2005).

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

²¹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's claim for reconsideration of the merits on the grounds that the request was untimely and failed to establish clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 27, 2012 is affirmed.

Issued: November 2, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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