

FACTUAL HISTORY

The case has previously been before the Board. In a decision dated September 25, 2002, the Board affirmed the termination of appellant's compensation as of June 1, 1992.³ The Board found that the weight of the medical evidence was represented by second opinion psychiatrist, Dr. Reynaldo Abejuela, who submitted reports dated February 1, 1996 to March 12, 1997. In a decision dated March 14, 2005, the Board affirmed a June 13, 2003 OWCP decision denying appellant's request for reconsideration without merit review of the claim.⁴ On August 23, 2006 the Board affirmed a November 21, 2005 OWCP decision finding appellant's application was untimely and failed to show clear evidence of error.⁵ By decision dated June 2, 2008, the Board affirmed a September 11, 2007 OWCP decision finding appellant's application for review was untimely and failed to show clear evidence of error.⁶ Again on May 7, 2010, the Board found that appellant's application for reconsideration was untimely and failed to show clear evidence of error.⁷ The history of the case is provided in the Board's prior appeals and is incorporated herein by reference.

By letter dated March 31, 2011, appellant requested reconsideration of his claim. He stated that there was "new information and evidence" and stated that he expected reconsideration for "PTSD 2007" and for left knee replacement in 2011. Appellant submitted a June 12, 2007 letter from OWCP stating that they assumed a May 31, 2007 letter was a request for reconsideration, noting that he had referred to post-traumatic stress disorder (PTSD). On April 4, 2011 he submitted an additional statement referring to "clear evidence of error" and stated that OWCP accepted an on-the-job injury on March 26, 1997 after he was "wrongfully terminated" February 20, 1995.⁸ Appellant stated that Dr. Lawrence Moss, a psychiatrist, and Dr. Ibrahim Farid, an occupational medicine specialist, opined that he could not work. He submitted an August 31, 1992 report from Dr. Farid stating that, based on medical and employment records and discussions with Dr. Moss, he felt appellant was not fit for postal employment in any capacity. Appellant also submitted portions of a December 1, 1992 report from Dr. Moss, who stated that appellant could return to full-time employment.

By decision dated June 27, 2011, OWCP determined that appellant's application for reconsideration was untimely. It further held that the application did not show clear evidence of error and therefore was insufficient warrant reopening the claim for merit review.

³ Docket No. 00-1176 (issued September 25, 2002). OWCP had accepted adjustment disorder and temporary aggravation of paranoid personality disorder due to an October 4, 1991 compensable incident.

⁴ Docket No. 03-1724 (issued March 14, 2005).

⁵ Docket No. 06-375 (issued August 23, 2006), *petition for recon. denied* (issued January 24, 2007).

⁶ Docket No. 07-2386 (issued June 2, 2008), *petition for recon. denied* (issued October 30, 2008).

⁷ Docket No. 09-1498 (issued May 7, 2010), *petition for recon. denied* (issued August 20, 2010).

⁸ On March 26, 1997 OWCP advised appellant that his claim was accepted for adjustment disorder and temporary aggravation of paranoid personality disorder, resolved as of June 1, 1992.

LEGAL PRECEDENT

FECA provides that OWCP may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.⁹ The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the “application for reconsideration.”¹⁰

According to 5 U.S.C. § 8128(a), a claimant is not entitled to a review of an OWCP decision as a matter of right.¹¹ This section vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.¹² OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a) of FECA. 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 OWCP’s decision for which review is sought. OWCP will consider an untimely application only if the application demonstrates clear evidence of error on the part of OWCP in its most recent merit decision. The evidence must be positive, precise and explicit and must manifest on its face that OWCP committed an error.¹³

To show clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflicting medical opinion or establish a clear procedural error, but must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP’s decision.¹⁴ Evidence that does not raise a substantial question concerning the correctness of OWCP’s decision is insufficient to establish clear evidence of error.¹⁵ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁶ The Board makes an independent determination as to whether a claimant has submitted clear evidence of error on the part of OWCP.¹⁷

ANALYSIS

Appellant’s application for reconsideration was dated March 31, 2011. The last decision on the merits of the claim was the Board’s September 25, 2002 decision. Since the application

⁹ 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.605 (1999).

¹¹ *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

¹² Under section 8128 of FECA, “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.”

¹³ *Robert F. Stone*, 57 ECAB 292 (2005); *D.O.*, Docket No. 08-1057 (issued June 23, 2009).

¹⁴ *Annie L. Billingsley*, 50 ECAB 210 (1998).

¹⁵ *Jimmy L. Day*, 48 ECAB 652 (1997).

¹⁶ *Id.*

¹⁷ *Thankamma Mathews*, 44 ECAB 765 (1993).

for reconsideration was filed more than one year after the decision on the merits of the claim, it was untimely filed.

As the application for reconsideration was untimely, appellant must show clear evidence of error by OWCP. The underlying merit issue was the determination that appellant's employment-related condition had resolved by June 1, 1992. Appellant has submitted statements in which he uses the phrase "clear evidence of error" and cites Board case law, without specifically explaining how the evidence establishes clear evidence of error by OWCP. There is a reference to PTSD in 2007, but the June 12, 2007 letter from OWCP resubmitted by appellant simply indicates that OWCP advised appellant that his May 31, 2007 letter was considered an application for reconsideration. As to a left knee condition, which appellant indicated had required surgery, this was not an accepted condition related to the employment injury in this case. Appellant submitted no evidence of error in this regard.

With regard to medical evidence, appellant resubmitted an August 31, 1992 report from Dr. Farid and two pages of a December 1, 1992 report from Dr. Moss. Dr. Farid does not provide a complete factual and medial background, does not discuss the compensable work factor or provide a reasoned medical opinion regarding an employment-related disability. His report does not establish clear evidence of error. The December 1, 1992 report from Dr. Moss indicated only that appellant at that time could return to work. Appellant did not submit a complete report and there is no discussion of an employment-related disability as of June 1, 1992. It does not establish clear evidence of error by OWCP. As noted above, the evidence must be of such probative value that it shifts the weight of the evidence in favor of the claimant.

The Board finds that the untimely application for reconsideration in this case does not establish clear evidence of error by OWCP in terminating compensation as of June 1, 1992. Appellant was not entitled to a merit decision and OWCP properly denied the application for reconsideration in this case.

On appeal, appellant repeats his assertions that OWCP improperly terminated his compensation and that all prior decisions are incorrect. The issue on appeal is clear evidence of error, and for the above reasons the Board finds appellant did not establish clear evidence of error by OWCP.

CONCLUSION

The Board finds appellant's application for reconsideration was untimely and failed to show clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 27, 2011 is affirmed.

Issued: October 21, 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