

ISSUE

The issue is whether OWCP 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.

FACTUAL HISTORY

On September 21, 2009, appellant, then a 32-year-old mail processing clerk, filed an occupational disease claim alleging an emotional condition due to various incidents and conditions at work. He claimed that management improperly failed to pick him to fill several job vacancies, neglected to provide him proper relocation notice when his job was being moved to another state and wrongly failed to credit him for time spent during the relocation process. Appellant also alleged that management subjected him to threats, discrimination and retaliation.

In the February 26, 2010 decision, OWCP denied appellant's claim finding that he did not establish any compensable work factors. It found that appellant did not submit sufficient evidence to show that management committed error or abuse with respect to administrative matters or that management subjected him to harassment and discrimination.

In a letter dated September 27, 2010, received by OWCP on October 15, 2012, appellant requested reconsideration of his claim. He provided argument regarding why he felt that management committed error or abuse with respect to administrative matters and subjected him to harassment and discrimination. In support of his reconsideration request, appellant submitted numerous documents which he felt established his claim for a work-related emotional claim. A number of the documents relate to Equal Employment Opportunity (EEO) claims he filed, including a claim in which he alleged that management had mishandled the relocation of his job to another state.

In a January 2, 2013 decision, OWCP denied appellant's reconsideration request on the grounds that it was untimely filed and failed to demonstrate clear evidence of error. It found that appellant's reconsideration request was untimely because it was received on October 15, 2012 and was filed more than one year after its February 26, 2010 merit decision denying his emotional condition claim. OWCP further found that appellant had not established clear evidence of error in the February 26, 2010 decision.

LEGAL PRECEDENT

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.³ The Board has found that the imposition of the one-year limitation does not constitute an abuse of the discretionary authority granted OWCP under section 8128(a) of FECA.⁴

³ 20 C.F.R. § 10.607(a).

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

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.”⁵ OWCP regulations and procedure provide that OWCP 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.⁶

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.⁷ The evidence must be positive, precise and explicit and must manifest on its face that OWCP committed an error.⁸ Evidence which does not raise a substantial question concerning the correctness of OWCP’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 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.¹¹

In determining whether a claimant has discharged his or her burden of proof and is entitled to compensation benefits, OWCP is required by statute and regulations to make findings of fact.¹² OWCP’s procedure further specifies that a final decision of OWCP must include findings of fact and provide clear reasoning which allows the claimant to “understand the precise defect of the claim and the kind of evidence which would tend to overcome it.”¹³ These requirements are supported by Board precedent.¹⁴

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 2.1602.5a (October 2011). OWCP procedure further provides, “The term ‘clear evidence of error’ is intended to represent a difficult standard. The claimant must present evidence which on its face shows that OWCP made a mistake. For example, a claimant provides proof that a schedule award was miscalculated, such as a marriage certificate showing that the claimant had a dependent but the award was not paid at the augmented rate. Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued would have created a conflict in medical opinion requiring further development, is not clear evidence of error.”

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

⁸ 20 C.F.R. § 10.607(b); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

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

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

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

¹² 5 U.S.C. § 8124(a) provides that OWCP “shall determine and make a finding of facts and make an award for or against payment of compensation.” 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP “shall contain findings of fact and a statement of reasons.”

¹³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (March 1997).

¹⁴ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

ANALYSIS

In its January 2, 2013 decision, OWCP properly determined that appellant filed an untimely request for reconsideration. Appellant's reconsideration request was filed on October 15, 2012, more than 180 days after OWCP's February 26, 2010 decision denying his emotional condition claim and, therefore, he must demonstrate clear evidence of error on the part of OWCP in issuing this decision.¹⁵

The Board finds that OWCP did not provide adequate facts and findings in support of its determination that appellant did not show clear evidence of error in its February 26, 2010 decision denying his emotional condition claim. In support of his untimely reconsideration request, appellant submitted argument regarding why he felt that management committed error or abuse with respect to administrative matters and subjected him to harassment and discrimination. He also submitted numerous documents which he felt established his claim for an emotional claim, including EEO claims he had filed in which he alleged management wrongdoing.¹⁶

In its January 2, 2013 decision, OWCP denied appellant's request for merit review by determining that he had not shown clear evidence of error in its February 26, 2010 decision. However, in support of this determination, it merely stated, "You did not present clear evidence of error." OWCP did not provide any discussion of the evidence or arguments appellant submitted in support of his reconsideration request.¹⁷

For these reasons, appellant was not apprised of the precise defect of his claim or the kind of evidence which would tend to overcome it. The case will be remanded to OWCP for further consideration of the evidence and argument submitted by appellant in support of his reconsideration request to be followed by a decision, containing adequate facts and findings, regarding whether he is entitled to a review of his claim on the merits.¹⁸

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether OWCP 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.

¹⁵ On appeal, appellant claimed that the record contains a postmarked envelope showing that he filed his reconsideration request within one year of OWCP's February 26, 2010 decision. The record does not contain such a postmarked envelope or other evidence showing that appellant filed his reconsideration request in a timely manner.

¹⁶ Appellant had filed an EEO claim alleging that management mishandled the relocation of his job to another state.

¹⁷ See *Robert M. Pace*, 46 ECAB 551 (1995) (in determining whether clear evidence of error is shown, a brief evaluation of the evidence should be included in the decision so that any subsequent reviewer will be able to address the issue of discretion).

¹⁸ See *supra* notes 12 through 14.

ORDER

IT IS HEREBY ORDERED THAT the January 2, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: May 13, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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