

FACTUAL HISTORY

This is the ninth appeal in the case. OWCP terminated appellant's compensation on the grounds that she refused an offer of suitable work in an April 17, 1992 decision and denied modification in a March 25, 1993 decision. In a decision dated October 1, 1998, the Board affirmed a January 12, 1996 OWCP decision finding that her reconsideration request was untimely and failed to show clear evidence of error.³ By decision dated January 23, 2003, the Board affirmed OWCP decisions dated April 26 and September 7, 2001 and April 11 and July 26, 2002, denying appellant's requests for reconsideration as untimely and failing to establish clear evidence of error.⁴ In the next appeal, the Board affirmed an August 8, 2003 OWCP decision that found her June 28, 2003 reconsideration request was untimely and failed to show clear evidence of error.⁵ By decision dated November 23, 2004, the Board affirmed decisions dated April 4 and May 17, 2004, finding that appellant's requests for reconsideration were untimely and failed to show clear evidence of error.⁶ In a decision dated December 27, 2007, the Board affirmed OWCP decisions dated May 10 and 29, 2007, finding that her applications for reconsideration were untimely and failed to show clear evidence of error.⁷ By decision dated January 6, 2009, the Board affirmed an April 4, 2008 OWCP decision again finding the request for reconsideration untimely and failing to show clear evidence of error.⁸ In a decision dated February 16, 2010, again the Board found appellant's application for reconsideration was untimely and failed to show clear evidence of error.⁹ The last Board decision was dated February 8, 2011, where the Board found that a March 4, 2010 application for reconsideration was untimely and failed to show clear evidence of error.¹⁰ The history of the case is contained in the Board's prior decisions and is incorporated herein by reference.

By letter dated February 15, 2011, appellant requested reconsideration of her claim. She argued that the employing establishment violated federal regulations while making a job offer. Appellant stated that the job offer did not include the date it was available, and there was no physician's approval prior to making the offer and the employing establishment failed to send a complete copy of the offer to OWCP. She argued that it was error for the March 25, 1993 OWCP decision not to vacate the April 17, 1992 decision.

³ Docket No. 96-2518 (issued October 1, 1998).

⁴ Docket No. 02-1814 (issued January 23, 2003).

⁵ Docket No. 03-2128 (issued October 30, 2003).

⁶ Docket No. 04-1429 (issued November 23, 2004).

⁷ Docket No. 07-1697 (issued December 27, 2007).

⁸ Docket No. 08-1420 (issued January 6, 2009).

⁹ Docket No. 09-1497 (issued February 16, 2010).

¹⁰ Docket No. 10-1335 (issued February 8, 2011).

In a decision dated March 1, 2011, OWCP found the reconsideration request was untimely. It further denied merit review on the grounds that the request failed to show clear evidence of error by OWCP.

By letter dated March 5, 2011, appellant again requested reconsideration. She stated that the job offer was not valid as it did not contain dates of availability. Appellant asserted that OWCP's decision should not be based on whether the reconsideration request was filed within one year, as the evidence showing error has been in the case record.

In a decision dated March 29, 2011, OWCP found that the application for reconsideration was untimely. It further denied merit review as appellant had failed to demonstrate clear evidence of error.

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.¹¹ The employee shall exercise this right through a request to the district OWCP. The request, along with the supporting statements and evidence, is called the "application for reconsideration."¹²

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.¹³ This section vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.¹⁴ 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.¹⁵

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.¹⁶ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to

¹¹ 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.605 (1999).

¹³ *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

¹⁴ 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."

¹⁵ *Robert F. Stone*, 57 ECAB 292 (2005); *D.O.*, Docket No. 08-1057 (issued June 23, 2009).

¹⁶ *Annie L. Billingsley*, 50 ECAB 210 (1998).

establish clear evidence of error.¹⁷ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁸ The Board makes an independent determination as to whether a claimant has submitted clear evidence of error on the part of OWCP.¹⁹

ANALYSIS

As the factual history indicates, the case has been before the Board on prior appeals with respect to clear evidence of error by OWCP. The Board has explained that a claimant has one year from a merit decision to file a timely application of reconsideration. If the application is more than one year after the merit decision, OWCP will reopen the case for merit review only if the evidence shows clear evidence of error by OWCP. The February 15 and March 5, 2011 applications for reconsideration were filed more than one year after the March 25, 1993 merit decision and are untimely. Therefore the issue is whether appellant has shown clear evidence of error.

The April 17, 1992 OWCP decision terminated appellant's compensation on the grounds that she refused an offer of suitable work. The March 25, 1993 OWCP decision denied modification of the termination decision. As the prior Board decisions establish, appellant has argued on reconsideration that the job offer was invalid. She has previously argued that the job offer did not include dates of availability, was medically unsuitable, and was not properly sent to OWCP. The February 15 and March 5, 2011 applications for reconsideration do not provide additional evidence. The Board has explained that the evidence of record does not show clear evidence of error in terminating appellant's compensation for refusal of suitable work. The February 15 and March 5, 2011 reconsideration requests do not establish clear evidence of error, and therefore OWCP properly denied the untimely requests without merit review of the claim.

On appeal, appellant reiterates her argument that OWCP committed error in this case as the job offer was not valid. For the reasons noted above, the evidence does not establish clear evidence of error by OWCP with respect to this claim.

CONCLUSION

The Board finds the applications for reconsideration were untimely and failed to show clear evidence of error.

¹⁷ *Jimmy L. Day*, 48 ECAB 652 (1997).

¹⁸ *Id.*

¹⁹ *Thankamma Mathews*, 44 ECAB 765 (1993).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 29 and 1, 2011 are affirmed.

Issued: December 6, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board