

FACTUAL HISTORY

On October 1, 2007 appellant, then a 52-year-old industrial hygienist, filed an occupational disease claim alleging that repetitive work duties caused her bilateral carpal tunnel syndrome. She indicated that she first became aware of the injury and its relation to her work on January 28, 2005. The employing establishment controverted the claim.

In a letter dated October 12, 2007, Jennifer Kon, the branch chief, controverted the claim. During the time she supervised appellant, since March 5, 2007, she denied that appellant performed repetitive hand, wrist and upper arm motions during keyboarding assignments. Ms. Kon explained that appellant produced no work products that involved keyboarding, weight lifting or carrying. She also indicated that appellant was provided with an ergonomic workstation, speech recognition software training and other assistive technology.

In a December 2, 2008 decision, OWCP denied appellant's claim. It found that the evidence was insufficient to establish that the events occurred as alleged. OWCP also noted that, despite requesting further factual and medical evidence, no further evidence was received.

In a letter dated November 30, 2009, received on December 4, 2009,² appellant advised OWCP that she had made several attempts to speak with her claims examiner and left a series of messages asking that her calls be returned. She asserted that she did not receive the December 2, 2008 decision until January 16, 2009, when the employer provided her a copy of the decision.³ Appellant indicated that, in lieu of her not having had the opportunity to speak with the claims examiner personally, she was "sending this information prior to/in advance to my submission of a request for reconsideration to primarily bring your attention to the time deadline in advance of my request for reconsideration." She noted that she was submitting a copy of the decision and provided a copy of her claim number.

In a letter dated December 14, 2009, OWCP acknowledged appellant's November 30, 2009 letter and advised her that it did not appear that she was requesting reconsideration at that time. It advised her that, if she wished to request consideration, she should specifically request it in writing. OWCP advised appellant that "at this time" her letter of November 30, 2009 was not being treated as a request for reconsideration "unless clarification is received from you in writing."

In response, appellant submitted a December 11, 2009 reconsideration request that was received by OWCP on December 17, 2009. She described her work-related duties as an industrial hygienist from January 2004 until April 2006 and as a manpower specialist from April 2007 through September 2008. Appellant noted that she was diagnosed with degenerative joint disease/degenerative osteoarthritis in 2004 and chronic lower back pain in 2006. She alleged that her bilateral, moderate to severe carpal tunnel syndrome was exacerbated by the lack of ergonomic OWCP conditions. Appellant denied having any hobbies or being exposed to other

² The envelope in which the letter was mailed was not retained by OWCP.

³ The record indicates that the December 2, 2008 decision was sent to appellant's address of record.

conditions outside the employing establishment. She advised that she had submitted medical documentation.

In a December 15, 2009 letter, appellant advised OWCP that she was submitting a report from her physician. In a January 28, 2005 report, Dr. Daniel R. Glor, a Board-certified neurologist, noted that on December 30, 2004 appellant fell and fractured her right humerus. He advised that she subsequently developed constant tingling in the left arm with occasional numbness in the left hand, plus pain in the left arm. Dr. Glor advised that appellant “worked on a keyboard a lot at work.” He diagnosed moderately severe carpal tunnel syndrome.

In a January 6, 2010 decision, OWCP denied appellant’s request for reconsideration finding that it was not timely filed and failed to present clear evidence of error.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right.⁴ This section vests OWCP with discretionary authority to determine whether it will review an award for or against payment of compensation.⁵ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority to determine whether it will review an award for or against payment of compensation.⁶ One such limitation is that the application for reconsideration must be sent within one year of the date of OWCP’s decision for which review is sought.⁷ In those instances when a request for reconsideration is not timely filed, OWCP will undertake a limited review to determine whether the application presents clear evidence of error on the part of OWCP in its most recent merit decision.⁸

ANALYSIS

The one-year time limitation begins to run on the date following the date of the original OWCP decision. Therefore, appellant had one year from December 2, 2008 to submit a timely request for reconsideration. OWCP found that appellant’s December 11, 2009 request for reconsideration was untimely as it was made more than one year after the December 2, 2008 merit decision.

However, the Board notes that OWCP also received a November 30, 2009 letter from appellant, in which she identified the December 2, 2008 OWCP decision, provided her claim number and noted that she had made several unsuccessful attempts to reach her claims examiner. Appellant noted that she was “sending this information prior to/in advance to my submission of a

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

⁵ Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.607.

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.607(b). Regarding the clear evidence of error standard, *see Thankamma Mathews*, 44 ECAB 765, 770 (1993).

request for reconsideration to primarily bring your attention to the time deadline in advance of my request for reconsideration.” In a December 14, 2009 letter, OWCP acknowledged her November 30, 2009 letter and advised her that it did not consider her letter to be a reconsideration request “at this time ... unless clarification is received from you in writing.” In her December 11, 2009 letter, received December 17, 2009, appellant provided the clarification that OWCP invited her to provide as she clearly advised that she sought reconsideration, noted arguments regarding her claim and submitted evidence.

The Board has held that a request for reconsideration need not be on any particular form but must be in writing, identify the decision and the specific issue or issues for which reconsideration is being requested and be accompanied by relevant and pertinent new evidence or argument not previously considered.⁹

The Board finds that appellant’s November 30, 2009 letter constituted a request for reconsideration in view of the Office’s December 14, 2009 letter requesting clarification which appellant promptly provided. In *Vicente P. Taimanglo*,¹⁰ the claimant identified OWCP’s decision in his letter, indicated that additional medical evidence had been submitted and stated that he was waiting for a response. The Board found that the letter constituted a timely request for reconsideration. In *Gladys Mercado*,¹¹ the claimant asked OWCP to help her reopen her case, provided her case number and submitted additional medical evidence. The Board found that this letter was a timely request for reconsideration. Although, in the present case, appellant did not submit additional evidence with her November 30, 2009 letter, OWCP’s December 14, 2009 letter invited her to provide additional information to clarify if her November 30, 2009 letter should be treated as a reconsideration request. As noted, she provided such clarification. In these circumstances, the Board finds that appellant’s November 30, 2009 letter constitutes a timely request for reconsideration.¹² In these circumstances, the Board finds that her November 30, 2009 letter, filed within one year of the December 2, 2008 merit decision, constituted a timely request for reconsideration.

As appellant timely requested reconsideration, OWCP improperly denied her reconsideration request by applying the legal standard reserved for cases where reconsideration is requested after more than one year. The Board will remand the case to OWCP for review of the new evidence and argument under the proper standard of review for a timely reconsideration

⁹ *Vicente P. Taimanglo*, 45 ECAB 504 (1984); *Darrell Stovall*, Docket No. 99-2562 (issued March 14, 2001). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1601.2(a) (May 1996).

¹⁰ *Taimanglo*, *supra* note 9.

¹¹ 52 ECAB 255 (2001).

¹² Although the November 30, 2009 reconsideration request was received on December 4, 2009, OWCP did not retain the envelope containing the request. OWCP regulations provide that the timeliness of a reconsideration request shall be determined by the postmark. 20 C.F.R. § 10.607(a). OWCP procedures provide that, if there is no envelope bearing a postmark or other evidence of mailing, the date of the letter itself should be used. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1601.3(b)(1) (January 2004). As there is no other evidence of the date of mailing or other transmission to OWCP, the date of the letter, November 30, 2009, makes the request timely within one year of the December 2, 2008 OWCP decision.

request,¹³ to undertake any appropriate additional development it deems necessary and to issue an appropriate decision.

On appeal, appellant argued that she had provided sufficient factual and medical evidence to rebut OWCP's decision and insufficiency. However, in light of the Board's decision, the case is being remanded for review of the evidence under the appropriate standard.

CONCLUSION

The Board finds that appellant's November 30, 2009 letter constituted a request for reconsideration which was timely filed within one year of OWCP's December 2, 2008 decision. The Board will remand the case for review of this evidence under the proper standard of review for a timely reconsideration request.

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2010 decision of Office of Workers' Compensation Programs be set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: May 25, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹³ 20 C.F.R. § 10.606(b).