

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On February 14, 2006 appellant, then a 31-year-old criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right hand injury on February 9, 2006 when his pelican case slipped and crushed his hand against the rear passenger car door. He noted that the pelican weighed about 80 pounds and that he felt a sharp pain running from his fingertips all the way down to his forearm and elbow. Appellant further noted that his right finger, which had previously been broken during sergeant training, was twisted 90 degrees to the right. He notified his supervisor on February 14, 2006.

In a March 8, 2006 medical report, Dr. David A. Blum, Board-certified in internal medicine, reported that appellant was injured at work on February 9, 2006 when he was carrying a heavy box filled with guns and equipment which began to fall and crushed his hand between the box and a car door. He stated that appellant had a sudden onset of numbness and electrical shocks in the right hand. Upon physical examination, Dr. Blum reported that appellant had a positive Tinel's over the carpal tunnel. He diagnosed right carpal tunnel syndrome, right scapholunate tear and mild pain in the right finger associated with an old mallet finger.

In a May 8, 2006 medical report, Dr. Blum reported that appellant had swelling on the dorsal aspect of the wrist. A magnetic resonance imaging (MRI) scan of the right wrist revealed tilting of the lunate. Dr. Blum diagnosed right wrist pain and possible partial scapholunate ligament tear.

In a May 26, 2006 nerve conduction study (NCS), Dr. Scott D. Tannenbaum, Board-certified in physical medicine and rehabilitation, reported that the study showed a strong possibility of carpal tunnel syndrome.

By letter dated June 27, 2006, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and asked that he respond to the provided questions within 30 days.

In a February 14, 2006 narrative statement, appellant reported that the pelican case he was carrying slipped and crushed his hand against the car door. He stated that Jeff Smith witnessed the incident.

In a February 14, 2006 witness statement, Mr. Smith stated that he was loading gear with appellant into the back of his government vehicle when he heard appellant yell out in pain. He walked around the car and saw appellant's swat box half way in the vehicle and also lying on the street. Appellant informed Mr. Smith that the case slipped and smashed his hand.

In a March 8 and July 5, 2006 medical treatment status report form, appellant's physician reported that appellant was having surgery on his right hand and was restricted from using it post surgery.

In a May 1, 2006 medical report, Dr. Michael Zlatkin, a Board-certified diagnostic radiologist, reported that the MRI scan of appellant's right wrist showed subtle alterations at the scapholunate ligament and secondary evidence of scapholunate instability.

In a July 6, 2006 narrative statement, appellant reported that he had not sustained any other injuries since February 9, 2006 and that he had worn a hand brace since the date of his injury.

By decision dated August 3, 2006, OWCP denied appellant's claim because the evidence failed to establish that the claimed medical condition was related to the accepted February 9, 2006 employment incident. It specifically noted that he did not indicate on his CA-1 form that he injured his wrist on February 9, 2006.

In a July 5, 2006 medical report, Dr. Blum reported that appellant complained of numbness in his right hand. The NCS revealed right carpal tunnel syndrome. Dr. Blum stated that appellant's right-sided symptoms only started after his work-related injury and thus, his work-related injury was the cause of his symptoms. He recommended an electromyogram test.

In a July 29, 2006 electrodiagnostic evaluation, Dr. Tannenbaum reported that the study was consistent with carpal tunnel syndrome, right being worse than left.

On November 1, 2010 appellant requested reconsideration of the August 3, 2006 OWCP decision. In support of his request, he stated that he was submitting additional evidence, including a July 5, 2006 medical report from Dr. Blum, which states that his injury was employment related. Appellant also stated that he should have been more specific on his CA-1 form and included his wrist when stating that he had a hand injury. In addition to Dr. Blum's July 5, 2006 medical report and Dr. Tannenbaum's July 29, 2006 electrodiagnostic evaluation, appellant resubmitted medical evidence previously of record.

By decision dated November 23, 2010, OWCP denied appellant's reconsideration request as untimely filed and failing to establish clear evidence of error. It specifically noted that Dr. Blum's July 5, 2006 medical report was not received until after OWCP's August 3, 2006 decision on October 11, 2006 and thus, did not establish an error in OWCP's decision.

LEGAL PRECEDENT

To be entitled to a merit review of OWCP's decision denying or terminating a benefit, a claimant must file his application for review within one year of the date of that decision.³ The

³ *Id.* at § 10.607(a).

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

OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation, if the claimant's application for review shows clear evidence of error on the part of OWCP in its most recent merit decision. To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by OWCP. The evidence must be positive, precise and explicit and must be manifested on its face that OWCP committed an error.⁵

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.⁶

Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.⁷ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.⁸ This entails a limited review by OWCP of the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.⁹ The Board makes an independent determination as to whether a claimant has submitted clear evidence of error on the part of OWCP.¹⁰

ANALYSIS

In its November 23, 2010 decision, OWCP properly determined that appellant failed to file a timely application for review. An application for reconsideration must be sent within one year of the date of the OWCP decision.¹¹ A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.¹² As appellant's November 1, 2010 request for reconsideration was submitted more than one year after the date of the last merit decision of record on August 3, 2006, it was untimely. Consequently, he must demonstrate clear evidence of error by OWCP in denying his claim.¹³

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

⁵ 20 C.F.R. § 10.607(b); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

⁶ *Annie L. Billingsley*, 50 ECAB 210 (1998).

⁷ *Jimmy L. Day*, 48 ECAB 652 (1997).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Mathews*, 44 ECAB 765, 770 (1993).

¹¹ *Supra* at note 3.

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b)(1) (January 2004).

¹³ *See Debra McDavid*, 57 ECAB 149 (2005).

The Board finds that appellant has not established clear evidence of error on the part of OWCP. In support of his request for reconsideration, appellant submitted a July 5, 2006 medical report from Dr. Blum, who diagnosed carpal tunnel syndrome and stated that, because his symptoms started after his injury, his work-related injury was the cause of his symptoms. However, this evidence is insufficient to establish that OWCP erred in its denial of appellant's claim.¹⁴ Dr. Blum did not provide detailed medical rationale explaining his conclusion that appellant's carpal tunnel syndrome was employment related. Further, this evidence was submitted after OWCP's August 3, 2006 merit decision. The Board notes that clear evidence of error is intended to represent a difficult standard. Evidence, such as a detailed well-rationalized medical report which if submitted before the merit denial might require additional development of the claim, is insufficient to establish clear evidence of error.¹⁵ Neither Dr. Blum nor Dr. Tannenbaum's reports raise a substantial question as to the correctness of OWCP's August 3, 2006 merit decision or demonstrate clear evidence of error.

On appeal, appellant stated that he should have included wrist injury on his CA-1 form and that his injury was related to the February 9, 2006 employment incident. While he addressed his disagreement with OWCP's decision to deny his claim for compensation, his general allegations do not establish clear evidence of error as his arguments do not raise a substantial question as to the correctness of OWCP's decision. The Board notes that the underlying issue is medical in nature and the medical evidence submitted was not sufficient to shift the weight of the evidence in appellant's favor and establish that OWCP erred in denying his claim.

Appellant also resubmitted a number of medical reports that OWCP had already evaluated in its August 3, 2006 decision. The resubmission of this evidence does not raise a substantial question as to the correctness of OWCP's decision.¹⁶ The submission of 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.¹⁷

Appellant has not otherwise provided any argument or evidence of sufficient probative value to shift the weight of the evidence in his favor and raise a substantial question as to the correctness of OWCP's decision.

CONCLUSION

The Board finds that appellant's request for reconsideration was untimely filed and did not demonstrate clear evidence of error.

¹⁴ See *W.R.*, Docket No. 09-2336 (issued June 22, 2010).

¹⁵ *Supra* note 12, Chapter 2.1602.3(c) (March 2011).

¹⁶ 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).

¹⁷ *D.G.*, 59 ECAB 455 (2008); *supra* note 12, Chapter 2.1602.3(c) (January 2004).

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 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