

On appeal, appellant contends that accompanying medical evidence from her attending physicians established continuing residuals of an accepted left sacroiliac joint strain.³ She asserts that various second opinion physicians were biased and unprofessional.

FACTUAL HISTORY

This is the second appeal before the Board. By decision and order issued March 18, 2011,⁴ the Board affirmed a December 29, 2009 decision of OWCP denying appellant's request for a hearing on the grounds that she had previously requested reconsideration. The law and the facts of the case as set forth in the Board's decision are incorporated by reference.

OWCP accepted that on January 12, 1995 appellant, then a 31-year-old letter carrier, sustained a left sacroiliac joint strain when she lifted trays of mail. By decision dated December 12, 2000, and affirmed by decisions dated May 15 and October 25, 2001 and November 13, 2002, OWCP found that she had no continuing residuals of the accepted sacroiliac strain.

In an April 18, 2011 letter, appellant requested reconsideration. She asserted that the medical opinion of her attending physicians established continuing residuals of an accepted left sacroiliac strain. Appellant contended that second opinion physicians in her case were biased, rude and unprofessional.

By decision dated May 2, 2011, OWCP denied reconsideration on the grounds that appellant's request was not timely filed and failed to present clear evidence of error. It found that her April 18, 2011 letter did not constitute factual or medical evidence which would be sufficient on its face to raise a substantial question regarding the correctness of OWCP's November 13, 2002 decision.

LEGAL PRECEDENT

Section 8128(a) of FECA⁵ does not entitle a claimant to a review of an OWCP decision as a matter of right.⁶ This section vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.⁷ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority. One such limitation is that OWCP will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.⁸ The Board has found that the imposition of this

³ Appellant also argued entitlement to a schedule award. As there is no final OWCP decision on this aspect of the claim, it is not an issue in the present appeal. *See* 20 C.F.R. § 501.2(c).

⁴ Docket No. 10-1640 (issued March 18, 2011).

⁵ 5 U.S.C. § 8128(a).

⁶ *Thankamma Mathews*, 44 ECAB 765, 768 (1993).

⁷ *Thankamma Mathews, id.*; *see also Jesus D. Sanchez*, 41 ECAB 964, 966 (1990).

⁸ 20 C.F.R. §§ 10.607; 10.608(b). The Board has concurred in OWCP's limitation of its discretionary authority; *see Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

one-year time limitation does not constitute an abuse of the discretionary authority granted OWCP under 5 U.S.C. § 8128(a).⁹

In those cases where requests for reconsideration are not timely filed, OWCP must nevertheless undertake a limited review of the case to determine whether there is clear evidence of error pursuant to the untimely request in accordance with section 10.607(b) of its regulations.¹⁰ OWCP's regulations state that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in OWCP's regulations, if the claimant's request for reconsideration shows "clear evidence of error" on the part of OWCP.¹¹

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which decided by OWCP.¹² The evidence must be positive, precise and explicit and must be manifest on its face that OWCP committed an error.¹³ Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.¹⁴ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁵ 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 by OWCP.¹⁶ The Board must make an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP such that OWCP abused its discretion in denying merit review in the face of such evidence.¹⁷

ANALYSIS

In its May 2, 2011 decision, OWCP properly determined that appellant failed to file a timely application for review. It rendered its most recent merit decision on November 13, 2002. Appellant's request for reconsideration was dated April 18, 2011, more than one year after November 13, 2002. Accordingly, her request for reconsideration was not timely filed.

In the April 18, 2011 letter, appellant contended that her physicians' opinions were sufficient to establish continuing residuals of the accepted back injury. She argued that second opinion physicians were biased against her. The Board finds that appellant's April 18, 2011

⁹ 5 U.S.C. § 10.607(b); *Thankamma Mathews*, *supra* note 6, *Jesus D. Sanchez*, *supra* note 7.

¹⁰ *Thankamma Mathews*, *supra* note 6.

¹¹ 20 C.F.R. § 10.607(b).

¹² *Thankamma Mathews*, *supra* note 6.

¹³ *Leona N. Travis*, 43 ECAB 227 (1991).

¹⁴ *Jesus D. Sanchez*, *supra* note 7.

¹⁵ *Leona N. Travis*, *supra* note 13.

¹⁶ *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

¹⁷ *Gregory Griffin*, *supra* note 8.

letter does not raise a substantial question as to whether OWCP's November 13, 2002 decision was in error or *prima facie* shift the weight of the evidence in her favor. Therefore, it is insufficient to establish clear evidence of error.

Appellant has not otherwise provided any argument or evidence of sufficient probative value to shift the weight of the evidence in her favor and raise a substantial question as to the correctness of OWCP's November 13, 2002 decision. Consequently, OWCP properly denied appellant's reconsideration request as her request does not establish clear evidence of error.

On appeal, appellant contends that accompanying medical reports established continuing residuals of the accepted left sacroiliac joint strain and that second opinion physicians were biased against her. The Board notes that her arguments and the majority of the medical reports were previously considered and rejected by OWCP prior to November 13, 2002. Appellant has not explained how further consideration of such evidence raises a substantial question as to the correctness of OWCP's November 13, 2002 decision. Regarding the medical documents that are new and not previously considered by OWCP, the Board may not consider new evidence for the first time on appeal.¹⁸

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

¹⁸ See *supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 2, 2011 is affirmed.

Issued: February 14, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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