

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>P.Q., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 12-475</b>
	)	<b>Issued: July 2, 2012</b>
	)	
<b>U.S. POSTAL SERVICE, POST OFFICE, Farmington, MI, Employer</b>	)	
	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 3, 2012 appellant appealed a November 17, 2011 decision of the Office of Workers' Compensation Programs (OWCP) denying her request for review of the merits of her claim. As more than 180 days has elapsed from the last merit decision of April 28, 2010 and the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

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

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Appellant submitted new evidence to OWCP after its November 17, 2011 decision. However, the Board lacks jurisdiction to review evidence for the first time on appeal. See 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

On appeal, appellant states that she knows that she filed her appeal after the one-year deadline, but that she was not aware of the correct procedures and that she thought that the employing establishment would follow through. She further contended that her injury became worse as the year progressed.

### **FACTUAL HISTORY**

On February 4, 2010 appellant, then a 47-year-old window clerk, filed an occupational disease claim alleging that she suffered from severe pain in the right side of her neck and right shoulder as a result of lifting and carrying full route tubs and trays from 6:30 a.m. to 8:00 a.m. every day. In support of her claim, she submitted numerous doctors' reports that addressed her symptoms, discussed tests and discussed her ability to work.

By decision dated April 28, 2010, OWCP denied appellant's claim as it found that the medical evidence did not demonstrate that the claimed medical condition was related to the established work events as required for coverage under FECA.

On August 16, 2011 appellant requested reconsideration. In an accompanying letter, she stated that at the time of the injury she was not aware of what she was supposed to do and was under the impression that management would handle everything. Appellant indicated that she tried not to miss work for doctors' appointments. She also submitted medical reports and pictures of her work area that had previously been submitted. In addition, appellant submitted statements from her colleagues that discussed her duties at work. In further support of her reconsideration request, she submitted a June 21, 2010 report which listed the provider as Dr. Shlomo Mandel, a Board-certified internist. The report reviewed appellant's clinical and radiographic findings and noted that she believed that her symptoms were the result of cumulative trauma over many years at the employing establishment. The report further indicated that it was a preliminary note and had not been reviewed by the senior physician. Further evidence submitted after the April 28, 2010 decision included duty status reports dated April 14 and August 24, 2010 with an illegible signature. These reports note a diagnosis of cervicalgia. The report noted that appellant believed her low back pain to be a result of repetitive lifting in October 2009.

By decision dated November 17, 2011, OWCP denied reconsideration as appellant's request was untimely filed and failed to establish clear evidence of error.

### **LEGAL PRECEDENT**

To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant must file her application for review within one year of the date of that decision.<sup>3</sup> 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.<sup>4</sup>

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<sup>3</sup> 20 C.F.R. § 10.607(a).

<sup>4</sup> 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.<sup>5</sup> OWCP regulations and procedure provide that it 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.<sup>6</sup>

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>7</sup> The evidence must be positive, precise and explicit and must manifest on its face that OWCP committed an error.<sup>8</sup> Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.<sup>9</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>10</sup> 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.<sup>11</sup> To show clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must be of sufficient probative value to prima facie shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP decision.<sup>12</sup>

### ANALYSIS

In its November 17, 2011 decision, OWCP properly determined that appellant failed to file a timely application for review. The most recent merit decision is dated April 28, 2010. Appellant's request for reconsideration was dated August 16, 2011, more than one year after the most recent merit decision. Accordingly, the Board finds that her request for reconsideration was not timely filed.

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<sup>5</sup> See 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

<sup>6</sup> *Id.* at § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3d (January 2004). OWCP's procedures further provide: "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 an error (for example, proof that a schedule award was miscalculated). 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." *Id.* at Chapter 2.1602.3c.

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

<sup>8</sup> See *Leona N. Travis*, 43 ECAB 227, 240 (1991).

<sup>9</sup> See *Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

<sup>10</sup> See *supra* note 8.

<sup>11</sup> See *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

<sup>12</sup> *Leon D. Faidley, Jr.*, *supra* note 4.

The Board further finds that appellant failed to establish clear evidence of error. In order to establish clear evidence of error, a claimant must submit evidence that is positive, precise and explicit and must manifest on its face that OWCP committed an error.<sup>13</sup> Appellant has not submitted such evidence. OWCP denied her claim because the medical evidence did not establish that the claimed medical condition was related to the established work events. The statements by appellant and her colleagues with regards to her work duties are not relevant to this issue. Evidence that is not germane to the issue on which the claim is denied is insufficient to demonstrate clear evidence of error.<sup>14</sup> Certain medical reports are duplicative of reports already in the record. Material which is cumulative or duplicative of that already in the record has no evidentiary value in establishing a claim.<sup>15</sup> The Board notes that it is unclear who signed the duty status reports of April 14 and August 24, 2011. Reports containing illegible signatures cannot constitute competent medical evidence because it cannot be determined that the person who signed it was a physician as defined under section 8101(2) of FECA.<sup>16</sup> The Board notes that the June 10, 2010 report attributed to Dr. Mandel does not appear to be signed or even reviewed by him. Accordingly, this report cannot constitute competent medical evidence.

The term clear evidence of error is intended to represent a difficult standard.<sup>17</sup> In order to establish clear evidence of error, the evidence submitted must be of sufficient probative value to raise a substantial question as to the correctness of OWCP's decision.<sup>18</sup> The evidence appellant submitted on reconsideration fails to meet this standard.

On appeal, appellant asserts that she was unaware of the correct procedures and that she thought the employing establishment would follow through. The Board notes that the appeal rights attached to the April 28, 2010 decision clearly advised her of the one-year time limitation for seeking further review before OWCP.<sup>19</sup>

### **CONCLUSION**

The Board finds that OWCP properly refused to reopen appellant's case for further review of her claim on the grounds that her request was untimely filed and failed to demonstrate clear evidence of error.

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<sup>13</sup> 20 C.F.R. § 10.607(a); *A.F.*, Docket No. 11-1297 (issued December 20, 2011).

<sup>14</sup> *K.M.*, Docket No. 12-68 (issued May 9, 2012).

<sup>15</sup> *A.F.*, *supra* note 13.

<sup>16</sup> 5 U.S.C. § 8101(2); *see also J.C.*, Docket No. 11-1925 (issued April 24, 2012).

<sup>17</sup> *S.S.*, Docket No. 11-1579 (issued April 24, 2012).

<sup>18</sup> *See Veletta C. Coleman*, 48 ECAB 367 (1997).

<sup>19</sup> *S.B.*, Docket No. 08-2464 (issued July 9, 2009).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 17, 2011 is affirmed.

Issued: July 2, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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