

FACTUAL HISTORY

On April 14, 2010 appellant, then a 52-year-old sales associate, filed a traumatic injury claim, alleging an emotional condition as a result of an armed robbery on October 22, 2009.

In a May 24, 2010 decision, OWCP denied appellant's claim on the grounds that she had failed to provide any medical evidence that contained a diagnosis of her condition or which explained the causal relationship to the accepted employment incident.

Appellant requested reconsideration on July 29, 2011. She submitted a July 15, 2011 medical note from Dr. Praveen Jetty, a Board-certified psychiatrist, who noted appellant's date of injury as October 22, 2009 and diagnosed post-traumatic stress disorder and major depression as "connected" to the trauma.

By decision dated August 25, 2011, OWCP denied appellant's request for reconsideration, finding that it was not timely filed and did not demonstrate clear evidence of error.

LEGAL PRECEDENT

To be entitled to a merit review of OWCP's decision denying or terminating a benefit, a claimant must file his or her application for review within one year of the date of that decision.² 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.³

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.⁴ OWCP regulations and procedure provide that OWCP 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.⁵

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.⁶ The evidence must be positive, precise and explicit and must

² 20 C.F.R. § 10.607(a).

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

⁴ *See* 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁵ 20 C.F.R. § 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).

⁶ *See Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

manifest on its face that OWCP committed an error.⁷ Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.⁸ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.⁹ 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.¹⁰

ANALYSIS

In its August 25, 2011 decision, OWCP properly determined that appellant filed an untimely request for reconsideration. Appellant's reconsideration request was filed on July 29, 2011, more than one year after the hearing representative's May 24, 2010 merit decision. Thus, it was filed outside the one-year time period. Appellant must therefore demonstrate clear evidence of error in the denial of her claim.

The Board finds that the evidence appellant submitted does not establish clear error in the denial of her claim. As noted, appellant established a compensable employment factor, the armed robbery incident of October 22, 2009. OWCP denied her claim finding the medical evidence insufficient to establish that she sustained a diagnosed condition causally related to the accepted employment factor. While Dr. Jetty's July 15, 2011 report is generally supportive of her claim, it is insufficient to establish clear evidence of error. The term clear evidence of error is intended to represent a difficult standard. The submission of evidence which, if submitted before the denial was issued, would have required further development, is still not enough to establish clear evidence of error.¹¹ Dr. Jetty's report does not manifest on its face that OWCP committed an error in denying appellant's claim. It did not provide a rationalized medical opinion on how the workplace incident caused appellant's diagnosed condition.¹² Thus, the evidence is insufficient to establish clear evidence of error.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration on the grounds that it was not timely filed and failed to establish clear evidence of error.

⁷ 20 C.F.R. § 10.607(b); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

⁸ See *Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

⁹ See *Leona N. Travis*, *supra* note 7.

¹⁰ See *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

¹¹ *L.F.*, Docket No. 11-62 (issued August 3, 2011); *Joseph R. Santos*, 57 ECAB 554 (2006).

¹² Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial of the claim, would have created a conflict in medical opinion as requiring further development, is not proof of clear evidence of error. See *James R. Mirra*, 56 ECAB 738 (2005).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 25, 2011 is affirmed.

Issued: May 15, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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