

On appeal, appellant generally contends that OWCP erred in denying her request for reconsideration and in the adjudication of her claim.

FACTUAL HISTORY

The case has previously been before the Board. On May 17, 1979 appellant, then a 26-year-old clerk, filed a traumatic injury claim alleging that she injured her neck and arm on April 19, 1979 in the performance of duty.³ OWCP accepted the claim for cervical strain and bilateral thoracic outlet syndrome.⁴ In the first appeal on June 28, 1988, the Board affirmed the February 22, 1988 OWCP decision which found appellant did not have a greater than eight percent permanent loss of use of each arm.⁵ On July 14, 1998 the Board affirmed OWCP's June 29 and October 23, 1995 decisions denying modification of a January 3, 1995 OWCP hearing representative's decision.⁶ In his January 3, 1995 decision, OWCP's hearing representative denied appellant's claim for a recurrence of disability and terminated her compensation for medical benefits. On November 7, 2005 the Board affirmed the February 9, 2005 OWCP decision concerning the denial of her recurrence claim on and after April 19, 1979. The Board found the opinion of Dr. Mary E. Reif, an impartial Board-certified neurologist, constituted the special weight of the evidence on the issues of whether appellant's myofascial pain syndrome was employment related and whether she sustained a recurrence of disability.⁷ On July 23, 2010 the Board dismissed appellant's appeal as it was from an informational letter from OWCP and not a final decision.⁸ The facts and history contained in the prior appeals are incorporated by reference.

On May 23, 2011 appellant requested reconsideration. She contended OWCP erred when it found her requests for reconsideration untimely as she had timely filed all her requests for reconsideration.

In an April 5, 2011 report, Dr. Alex Mohit, an examining Board-certified neurological surgeon, provided physical findings and medical history. He diagnosed neck pain, bilateral numbness and tingling in her arms and cervical spondylosis. In a follow-up April 26, 2011

³ Appellant's name was Y.B. at the time of injury. By letter dated May 28, 1991, she informed OWCP she had legally changed her name to Y.J. Also, while she noted the date of injury as "April 12, 1979" on the front of the Form CA-1, appellant noted "April 19, 1979" on the back and OWCP has thus used April 19, 1979 as the date of injury.

⁴ Appellant resigned from her position on November 16, 1979.

⁵ Docket No. 88-806 (issued June 28, 1988).

⁶ Docket No. 96-695 (issued July 14, 1998).

⁷ Docket No. 05-1233 (issued November 7, 2005). OWCP referred appellant on April 14, 2004 to Dr. Reif due to the conflict in the medical opinion evidence between Dr. Harry S. Reese, a treating Board-certified orthopedic surgeon, and Office referral physicians, Drs. Harry H. Kretzler, Jr., a Board-certified orthopedic surgeon, and James Crowley, a Board-certified neurological surgeon, regarding the diagnosis of myofascial pain syndrome and its relationship to appellant's accepted April 19, 1979 employment injury.

⁸ Docket No. 09-2162 (issued July 23, 2010).

report, Dr. Mohit provided physical findings and recommended anterior cervical discectomy and fusion at C4-7.

By decision dated August 24, 2011, OWCP denied appellant's reconsideration request on the grounds that it was untimely filed and that she failed to establish clear evidence of error.

LEGAL PRECEDENT

FECA⁹ provides that OWCP may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the district OWCP. The request, along with the supporting statements and evidence, is called the application for reconsideration.¹⁰ To be entitled to a merit review of an OWCP 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.¹¹ 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.¹²

Title 20 of the Code of Federal Regulations, section 10.607(b) provide that OWCP will consider an untimely application only if it demonstrates clear evidence of error by OWCP in its most recent merit decision. To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP. The evidence must be positive, precise and explicit, and must manifest on its face that OWCP committed an error. Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.¹³ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. 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. 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 shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision. The Board makes 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.¹⁴

⁹ 5 U.S.C. § 8101 *et seq.*

¹⁰ 20 C.F.R. § 10.605.

¹¹ *Id.* at § 10.607(a). See *J.S.*, Docket No. 10-385 (issued September 15, 2010); *L.D.*, 59 ECAB 648 (2008); *Robert G. Burns*, 57 ECAB 657 (2006).

¹² 5 U.S.C. § 8128(a). See *B.W.*, Docket No. 10-323 (issued September 2, 2010); *M.E.*, 58 ECAB 309 (2007); *Joseph R. Santos*, 57 ECAB 554 (2006); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

¹³ See *G.H.*, 58 ECAB 183 (2006); *Andrew Fullman*, 57 ECAB 574 (2006); *Alberta Dukes*, 56 ECAB 247 (2005); see also *Leon J. Modrowski*, 55 ECAB 196 (2004).

¹⁴ See *M.L.*, Docket No. 09-956 (issued April 15, 2010); *G.H.*, *supra* note 13; *Alberta Dukes*, *supra* note 13.

ANALYSIS

The Board finds that OWCP properly determined that appellant failed to file a timely request for reconsideration. Its procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original OWCP decision.¹⁵ However, a right to reconsideration within one year also accompanies any subsequent merit decision on the issues.¹⁶

The most recent merit decision in this case was the November 7, 2005 Board decision affirming the denial of her claim for a recurrence of total disability on and after May 7, 2002 causally related to her accepted April 19, 1979 employment injury. As appellant's May 23, 2011 letter requesting reconsideration of the merits of her claim by OWCP was made more than one year after the November 7, 2005 merit decision,¹⁷ the Board finds that it was not timely filed.

The Board finds that the evidence submitted by appellant in support of her May 23, 2011 request for reconsideration does not raise a substantial question as to the correctness of OWCP's denial of her recurrence of disability claim or shift the weight of the evidence of record in her favor. The reports from Dr. Mohit dated April 5 and 26, 2001 noted that appellant had neck pain, bilateral numbness and tingling in her arms and cervical spondylosis. Dr. Mohit addressed the history of appellant's injury and current medical condition, but did not address whether she was disabled commencing May 7, 2002 due to her accepted April 19, 1979 employment injury.¹⁸ The Board finds that his reports are insufficient to show that OWCP's February 9, 2005 decision concerning the denial of her recurrence claim was erroneous or raises a substantial question as to the correctness of OWCP's decision.

The Board finds that the arguments and evidence submitted by appellant in support of her May 23, 2011 for reconsideration do not shift the weight of the evidence in her favor or raise a substantial question as to the correctness of the November 7, 2005 decision and are thus insufficient to demonstrate clear evidence of error.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration, as the request was filed outside the one-year time limitation and did not establish clear evidence of error.

¹⁵ See *Veletta C. Coleman*, 48 ECAB 367, 370 (1997); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(a) (October 2011). See also *supra* note 9; *Alberta Dukes*, *supra* note 13.

¹⁶ See *D.G.*, 59 ECAB 734 (2008); *Robert F. Stone*, 57 ECAB 292 (2005).

¹⁷ Appellant had one year to request reconsideration by OWCP of the Board's November 7, 2005 decision. See Federal (FECA) Procedure Manual, *supra* note 15.

¹⁸ Evidence that is not germane to the issue on which the claim was denied is insufficient to demonstrate clear evidence of error. *F.R.*, Docket No. 09-575 (issued January 4, 2010); *Thankamma Mathews*, 44 ECAB 765 (1993).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 24, 2011 is affirmed.

Issued: May 24, 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