

FACTUAL HISTORY

On May 7, 2001 appellant, then a 47-year-old accounts payable clerk, filed a Form CA-1 for traumatic injury, alleging that she sustained right carpal tunnel syndrome on May 2, 2001. She did not incur any lost time from work.² The employing establishment controverted the claim on the grounds that appellant complained of symptoms intermittently for two years.

OWCP informed appellant in a May 30, 2001 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a factual statement detailing the May 2, 2001 work event and a medical report from a qualified physician explaining how this purported incident caused or contributed to a diagnosed condition. OWCP did not receive a response.

By decision dated July 6, 2001, OWCP denied appellant's claim, finding that she failed to submit evidence demonstrating that she experienced an employment incident on May 2, 2001 as alleged.

Appellant requested reconsideration on September 14, 2011 and argued that her physicians both diagnosed bilateral carpal tunnel syndrome and opined that the condition resulted from repetitive typing on the job. She was scheduled for surgery in November 2011.

By decision dated October 25, 2011, OWCP denied appellant's request for reconsideration, finding that it was not filed within one year of the July 6, 2001 decision and did not establish clear evidence of error.

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.³ This discretionary authority, however, is subject to certain restrictions. Section 10.607(a) provides that a request for reconsideration must be filed within one year of the date of OWCP's decision for which review is sought.⁴ The Board has found that the imposition of this one-year filing limitation does not constitute an abuse of discretion.⁵

OWCP may not deny a reconsideration request solely on the grounds that it was not timely filed. When a claimant's application for review is not timely filed, it must nevertheless undertake a limited review to determine whether it establishes clear evidence of error. If an application demonstrates clear evidence of error, OWCP will reopen the case for merit review.⁶

² Appellant retired effective October 1, 2006.

³ See 5 U.S.C. § 8128(a); *Y.S.*, Docket No. 08-440 (issued March 16, 2009).

⁴ *D.O.*, Docket No. 08-1057 (issued June 23, 2009); *W.G.*, Docket No. 08-2340 (issued June 22, 2009).

⁵ *E.R.*, Docket No. 09-599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁶ *M.L.*, Docket No. 09-956 (issued April 15, 2010). See also 20 C.F.R. § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(c) (September 2011) ("The term 'clear evidence of error' is intended to represent a difficult standard.").

To establish clear evidence of error, a claimant must submit evidence that is relevant to the issue that was decided by OWCP,⁷ is positive, precise, and explicit, and manifests on its face that OWCP committed an error.⁸ The evidence 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 for which review is sought. Evidence that does not raise a substantial question is insufficient to establish clear evidence of error. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. A determination of whether the claimant has established clear evidence of error entails a limited review of how the evidence submitted with the reconsideration request bears on the evidence previously of record.⁹

ANALYSIS

The Board finds that appellant filed an untimely request for reconsideration. The last merit decision in this case was issued on July 6, 2001. On September 14, 2011 over 10 years later appellant filed an application to reopen this decision for further merit review. Because more than one year passed from July 6, 2001 to September 14, 2011, OWCP properly determined that her reconsideration request was not timely filed.

The Board also finds that appellant's untimely request failed to demonstrate clear evidence of error. By decision dated July 6, 2001, OWCP denied her traumatic injury claim, citing that the case record did not contain any evidence showing that she experienced an employment incident on May 2, 2001 as alleged. Appellant thereafter requested reconsideration and asserted that she sustained bilateral carpal tunnel syndrome due to repetitive typing on the job. As noted, the question of whether a claimant has established clear evidence of error entails a limited review of how the evidence submitted with the reconsideration request bears on the evidence previously of record. Here, while appellant specifically addressed mechanism of injury,¹⁰ the underlying issue of OWCP's July 6, 2001 merit decision, her statement did not manifest on its face that OWCP erred with regard to the earlier case record. As noted, it is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. Since no substantial question was raised as to the correctness of the July 6, 2001 decision, OWCP properly determined that she failed to establish clear evidence of error.

Appellant raises several contentions on appeal implicating the merits of her case. The Board, however, only has jurisdiction to consider whether her untimely request for

⁷ See *Dean D. Beets*, 43 ECAB 1153 (1992).

⁸ See *Leona N. Travis*, 43 ECAB 227 (1991).

⁹ See *J.S.*, Docket No. 10-385 (issued September 15, 2010); *B.W.*, Docket No. 10-323 (issued September 2, 2010).

¹⁰ The Board points out that appellant's recent account specified that her condition developed over a period of time rather than during a single workday or shift, which was more consistent with a claim for occupational disease. See 20 C.F.R. § 10.5(q) (ee).

reconsideration established clear evidence of error. As discussed, the evidence accompanying appellant's application did not manifest on its face that OWCP committed an error.¹¹

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration on the basis that it was untimely filed and did not establish clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the October 25, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 2, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹¹ The Board notes that appellant furnished additional evidence following issuance of the October 25, 2011 decision and on appeal. However, the Board lacks jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c).