

FACTUAL HISTORY

On October 18, 2007 appellant, then a 49-year-old housekeeping aide, filed a claim (Form CA-2) for left carpal tunnel syndrome (CTS), which reportedly arose on or about September 15, 2007. Less than two weeks prior to filing the instant claim, OWCP accepted her traumatic injury claim (xxxxxx140) for right CTS with a June 6, 2007 date of injury. On her CA-2 form appellant noted that she had been advised to file a separate claim with respect to her left upper extremity complaints. However, she did not submit any medical evidence with her CA-2 form. Appellant also did not identify specific employment duties that either caused or contributed to her claimed condition.

By letter dated October 26, 2007, OWCP acknowledged receipt of appellant's CA-2 form and advised her of the need for medical evidence to support her claimed condition. It also instructed her to submit a detailed statement describing the employment-related activities she believed contributed to her condition. OWCP also inquired about appellant's outside activities.

OWCP subsequently received progress notes dated October 9, 19 and 26 and November 20, 2007, which indicated that appellant had recently undergone a right carpal tunnel release and had been released to return to light-duty work effective October 24, 2007. It also received an October 31, 2007 occupational therapy rehabilitation plan and a similarly dated duty status report (Form CA-17).

In a decision dated January 18, 2008, OWCP denied appellant's occupational disease claim because she failed to establish that the claimed left-sided carpal tunnel condition was causally related to her employment duties.³

In March and April 2008, OWCP received additional progress notes. Appellant was discharged from physical therapy on April 8, 2008. She continued to complain of pain and weakness in both hands. Appellant's diagnosis at the time was bilateral de Quervain's tendinitis. She was advised to continue light-duty work and avoid heavy lifting and pushing with both arms.

On February 13, 2012 appellant requested reconsideration. She claimed that she had only recently received OWCP's January 18, 2008 decision denying her claim.

Appellant submitted two recent reports from Dr. Christopher D. Adams, a Board-certified internist with a subspecialty in rheumatology. In a report dated January 18, 2012, Dr. Adams indicated that he had examined her on October 25, 2011 to address the cause of her bilateral arm and shoulder pain. Based on his examination, he was able to exclude autoimmune connective tissue disease as the cause of appellant's complaints. Dr. Adams noted that appellant had reportedly been involved in a motor vehicle accident (MVA) in 2007.⁴

³ The October 26, 2007 initial development letter and the January 18, 2008 decision were both sent to the same "Kimberly Ave." address as noted on appellant's October 18, 2007 CA-2 form.

⁴ Appellant previously filed a claim for a right arm injury allegedly due to an April 5, 2007 MVA (xxxxxx828).

In a February 22, 2012 report, Dr. Adams noted that appellant had significant cervical disc disease on x-ray and physical findings of radiculopathy that were consistent with degenerative cervical disc disease. He further stated that her x-ray findings could well be related to her 2007 MVA. Dr. Adams reiterated that, based on his examination, appellant did not have evidence of inflammatory connective tissue disease. He further indicated that it was reasonable to relate her hand and neck pain to cervical spondylosis with radiculopathy.

OWCP also received part of a consultation report that had been requested on August 24, 2007.⁵ Appellant had reportedly been in a car accident and subsequently developed symptoms of CTS. The report further noted that a two-month-old nerve conduction study showed possible CTS and a repeat study showed further changes despite use of a splint and activity modification. Appellant complained of bilateral symptoms, right greater than left. She received a provisional diagnosis of CTS and was reportedly agreeable to surgery.

Appellant also submitted August 27, 2007 progress notes from Dr. Janakiram Rajamannar, a physiatrist, who indicated, *inter alia*, that appellant's then-recent diagnostic studies (EMG/NCV) showed progression of her right hand problems and positive findings in the left hand.

By decision dated March 23, 2012, OWCP denied appellant's request for reconsideration. While appellant alleged that she had only recently learned her claim had been denied, OWCP noted that the January 18, 2008 decision had not been returned as undeliverable. OWCP further found that she had not demonstrated clear evidence of error with respect to the January 18, 2008 denial of her claim.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁶ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁷ One such limitation is that the application for reconsideration must be sent within one year of the date of the merit decision for which review is sought.⁸ When a request for reconsideration is untimely, OWCP will undertake a limited review to determine whether the application presents "clear evidence of error" on the part of OWCP in its "most recent merit decision."⁹

⁵ The second page of this 2-page report is missing and it is unclear who authored the consultation report.

⁶ This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.607.

⁸ *Id.* at § 10.607(a).

⁹ *Id.* at § 10.607(b).

ANALYSIS

Appellant's request for reconsideration is dated February 13, 2012, which is more than a year after OWCP's January 18, 2008 merit decision, but she claimed not to have received the decision when it was initially issued. In the absence of evidence to the contrary, it is presumed that a notice mailed in the ordinary course of business was received in due course by the intended recipient.¹⁰ This presumption is commonly referred to as the "mailbox rule."¹¹ It arises when the record reflects that the notice was properly addressed and duly mailed.¹²

OWCP mailed the January 18, 2008 decision to appellant's address of record, which she noted on her October 18, 2007 CA-2 form. This is also the same street address she noted on her current application for review (AB-1) before the Board. There is no record of appellant having advised OWCP of any change of address prior to the issuance of the January 18, 2008 decision. Also, there is no evidence that the January 18, 2008 decision was returned to OWCP as undeliverable. Accordingly, it is presumed that appellant received OWCP's January 18, 2008 decision in due course.

Appellant's request for reconsideration post-dated the January 18, 2008 merit decision by more than four years. Because her February 13, 2012 request was untimely, she must demonstrate "clear evidence of error" on the part of OWCP in denying her claim for left CTS.¹³ OWCP denied appellant's claim because she had not established a causal relationship between her left upper extremity complaints and her employment duties as a housekeeping aide. To date, appellant has not provided a statement identifying specific employment duties she believes are responsible for her claimed condition. Moreover, the medical evidence does not attribute her diagnosed left hand/wrist condition to specific employment duties. Dr. Adams' recent reports attributed appellant's hand and neck complaints to cervical degenerative disc disease and/or a 2007 MVA. While the evidence includes repeated references to a 2007 automobile accident, that particular incident is the subject of a separate traumatic injury claim (xxxxxx828). As noted, OWCP previously accepted right CTS under a separate June 6, 2007 traumatic injury claim (xxxxxx140). The instant claim pertains to the development of that same condition in the left upper extremity on or about September 15, 2007. The Board finds that she has not demonstrated

¹⁰ *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

¹¹ *Id.*

¹² *Id.*

¹³ 20 C.F.R. § 10.607(b). To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by OWCP. *See Dean D. Beets*, 43 ECAB 1153 (1992). The evidence must be positive, precise and explicit and it must be apparent on its face that OWCP committed an error. *See Leona N. Travis*, 43 ECAB 227 (1991). It is not enough to merely show that the evidence could be construed to produce a contrary conclusion. *Id.* Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error. *See Jesus D. Sanchez*, 41 ECAB 964 (1990). 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's decision. *Thankamma Mathews*, 44 ECAB 765, 770 (1993).

clear evidence of error. As such, there is no justification for further merit review. Accordingly, OWCP properly declined to reopen appellant's case under 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant's February 13, 2012 request for reconsideration was untimely and she failed to demonstrate clear evidence of error. Therefore, appellant is not entitled to further merit review.

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board