

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

D.R., Appellant

and

**DEPARTMENT OF THE AIR FORCE, LOS
ANGELES AIR FORCE BASE, El Segundo, CA,
Employer**

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**Docket No. 12-1288
Issued: October 17, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 25, 2012 appellant filed a timely appeal from a January 31, 2012 nonmerit decision of the Office of Workers' Compensation Programs denying her request for reconsideration as untimely and insufficient to establish clear evidence of error. As the last merit decision was issued November 8, 2002, more than one year from the filing of the appeal,¹ the Board lacks jurisdiction to review the merits of this case pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration as it was untimely and did not show clear evidence of error.

¹ For final adverse decisions of OWCP issued prior to November 19, 2008, a claimant had up to one year to file a Board appeal. *See* 20 C.F.R. § 501.3(d)(2)(2008). For final adverse decisions of OWCP issued on or after November 19, 2008, a claimant has 180 days to file a Board appeal. *See* 20 C.F.R. § 501.3(e).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 20, 2002 appellant, then a 43-year-old financial analyst, filed an occupational disease claim alleging that she sustained a stress-related condition due to wrongful termination on January 14, 2000. She noted that she was reinstated by the employing establishment on May 6, 2001.

By decision dated June 5, 2002, OWCP denied appellant's emotional condition claim finding that she did not establish any compensable work factors. It determined that the employing establishment terminated her employment and then reinstated her following a decision by the Merit Systems Protection Board.³ OWCP noted, however, that appellant failed to submit a copy of the decision or provide a detailed description of the work factors to which she attributed her condition.

On August 5, 2002 appellant requested reconsideration. In a decision dated November 8, 2002, OWCP denied modification of its June 5, 2002 decision. It reviewed the evidence and found that the employing establishment removed appellant for misuse of government-issued credit cards. Appellant was reinstated after a negotiated settlement that did not constitute an admission of wrongdoing by the employing establishment.

On October 26, 2011 appellant requested reconsideration.⁴ She argued that the employing establishment improperly failed to provide her with priority reemployment after a termination decision under file number xxxxxx833.⁵ Appellant further maintained that the employing establishment violated federal and state rules, discriminated against her and acted in a retaliatory manner. She asserted that she experienced stress due to the delay in reemployment, unfavorable experiences with OWCP and mortgage fraud. Appellant asserted that the employing establishment treated her unfairly.

Appellant submitted correspondence with the employing establishment regarding her attempt to secure employment. She further submitted copies of OWCP decisions, a complaint of discrimination by OWCP, a dismissal of the complaint by the Department of Labor and certificates recognizing her performance by the employing establishment. December 17, 2010 emergency room report indicated that appellant received treatment after she was evicted from her home. On December 18, 2010 a social worker noted that appellant believed that her identity had been stolen and that she was a "victim of fraud."

By decision dated January 31, 2012, OWCP denied appellant's request for reconsideration after finding that it was untimely and did not establish clear evidence of error.

³ OWCP determined that appellant had established that she was terminated and then reinstated under file number xxxxxx833.

⁴ Appellant also requested reconsideration of another file number and raised arguments pertaining to that claim.

⁵ Appellant has filed an appeal with the Board from file number xxxxxx833. The Board will address appellant's arguments relevant to file number xxxxxx833 in Docket No. 12-1287.

On appeal, appellant argues that OWCP failed to adequately review her case and her supporting evidence and argument. She further contends that OWCP violated state and federal laws.

LEGAL PRECEDENT

OWCP, through regulation, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of FECA.⁶ It will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.⁷ When an application for review is untimely, it undertakes a limited review to determine whether the application presents clear evidence that its final merit decision was in error.⁸ OWCP's procedures state 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, if the claimant's application for review shows "clear evidence of error" on the part of OWCP.⁹ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹⁰

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.¹¹ 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 raise a substantial question as to the correctness of OWCP's decision.¹² The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP such that it improperly denied merit review in the face of such evidence.¹³

⁶ *Supra* note 2.

⁷ 20 C.F.R. § 10.607; *see also* *Alan G. Williams*, 52 ECAB 180 (2000).

⁸ *Veletta C. Coleman*, 48 ECAB 367 (1997).

⁹ *See Gladys Mercado*, 52 ECAB 255 (2001). Section 10.607(b) provides: "[OWCP] will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of [it] in its most recent decision. The application must establish, on its face, that such decision was erroneous." 20 C.F.R. § 10.607(b).

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

¹¹ *Leon J. Modrowski*, 55 ECAB 196 (2004); *Dorletha Coleman*, 55 ECAB 143 (2003).

¹² *Id.*

¹³ *Pete F. Dorso*, 52 ECAB 424 (2001); *John Crawford*, 52 ECAB 395 (2001).

ANALYSIS

OWCP properly determined that appellant failed to file a timely application for review. Its procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original OWCP decision.¹⁴ A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.¹⁵ As appellant's October 26, 2011 request for reconsideration was submitted more than one year after the last merit decision of record, it was untimely. Consequently, she must demonstrate clear evidence of error by OWCP in denying her claim for compensation.¹⁶

Appellant contended that the employing establishment violated federal and state rules, acted in a discriminatory manner and retaliated against her. The underlying issue in this case is whether she established a compensable work factor. Appellant's general allegation is insufficient to establish clear evidence of error as she did not identify any specific error by OWCP in finding that she had not established a compensable employment factor or submit any evidence supporting her allegations of rule violations, retaliation or discrimination.

Appellant alleged that she experienced stress from mortgage fraud and dealing with OWCP. Matters regarding mortgage fraud are outside the scope of FECA. Additionally, the handling of a workers' compensation claim is not related to an employee's job duties and is not considered a compensable work factor.¹⁷ Consequently, appellant has not raised an allegation that warrants a finding of clear evidence of error.

In support of her request for reconsideration, appellant submitted letters regarding her request to resume work at the employing establishment, copies of OWCP decisions, a complaint made against OWCP and certificates recognizing her performance by her employer. She further submitted a December 17, 2010 emergency room report and a December 18, 2010 report from a social worker who noted that appellant felt that her identity had been stolen. None of this evidence, however, is relevant to the underlying issue of whether appellant has established a compensable work factor supporting her emotional condition claim. In order to establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹⁸

On appeal, appellant contends that OWCP violated state and federal laws and did not properly review her case. She did not, however, specify any particular legal or factual error or violation of the law by OWCP. In order to establish clear evidence of error, the evidence

¹⁴ 20 C.F.R. § 10.607(a).

¹⁵ *Robert F. Stone*, 57 ECAB 292 (2005).

¹⁶ 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

¹⁷ *See W.S.*, Docket No. 08-2126 (issued April 15, 2009); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

¹⁸ *Howard Y. Miyashiro*, 51 ECAB 253 (1999).

submitted must raise a substantial question as to the correctness of OWCP's decision.¹⁹ The evidence that appellant submitted on reconsideration fails to meet this standard.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration as it was untimely and did not show clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 17, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

¹⁹ See *Veletta C. Coleman*, *supra* note 8.