

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits as his request was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On October 6, 2001 appellant, then a 51-year-old letter carrier, filed a traumatic injury claim alleging that on October 2, 2001 he sustained emotional trauma and physical injury to his back, neck and head when his supervisor came up behind him and pushed him and he fell to the floor.

In a December 5, 2001 decision, OWCP denied appellant's claim finding that the evidence of record did not establish that the claimed October 2, 2001 work incident occurred in the manner alleged and, therefore, he did not establish fact of injury. It noted that several witnesses testified that on October 2, 2001 he fell to the floor of his own volition.

In a September 10, 2002 decision, OWCP's hearing representative affirmed the December 5, 2001 decision. She found that there were such inconsistencies in the evidence as to cast serious doubt on the validity of appellant's claim.

In a March 12, 2003 decision,⁴ the Board affirmed OWCP's September 10, 2002 decision finding that appellant did not establish that he sustained a work injury on October 2, 2001.

In a July 12, 2012 letter received on July 13, 2012, appellant requested reconsideration of OWCP's September 10, 2002 decision. He alleged that OWCP's hearing representative was instructed to deny his claim by several officials of the employing establishment. Appellant claimed that the October 2, 2001 work injury left him with physical and emotional injuries that still required medical treatment. He wanted his case to be reopened and asserted that he had "witness statements and medical treatment" that supported acceptance of his claim. Appellant also noted that he would like to have legal representation. He did not submit any evidence in support of his reconsideration request.

In an August 6, 2012 decision, OWCP denied appellant's request for further review of the merits of his claim on the grounds that his request was untimely filed and failed to demonstrate clear evidence of error. It found that his July 12, 2012 reconsideration request was untimely as it was submitted more than one year after the most recent merit decision of record. OWCP discussed appellant's July 12, 2012 letter and further determined that he had not presented clear evidence of error in its prior decision denying his claim.

⁴ Docket No. 03-45 (issued March 12, 2003).

LEGAL PRECEDENT

To be entitled to a merit review of OWCP's decision denying or terminating a benefit, a claimant must file his application for review within one year of the date of that decision.⁵ 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.⁶

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."⁷ 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.⁸

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.⁹ The evidence must be positive, precise and explicit and must manifest on its face that OWCP committed an error.¹⁰ 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.¹² 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.¹³

⁵ 20 C.F.R. § 10.607(a).

⁶ 5 U.S.C. § 2128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

⁷ *See* 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁸ *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5 (October 2011). OWCP procedure further provides, "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 a mistake. For example, a claimant provides proof that a schedule award was miscalculated, such as a marriage certificate showing that the claimant had a dependent but the award was not paid at the augmented rate. Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued would have created a conflict in medical opinion requiring further development, is not clear evidence of error." *See id* at Chapter 2.1602.5a (October 2011).

⁹ *See Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

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

¹¹ *See Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

¹² *See Leona N. Travis*, *supra* note 10.

¹³ *See Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

ANALYSIS

In December 5, 2001 and September 10, 2002 decisions, OWCP denied appellant's claim that he sustained a work injury on October 2, 2001. In a March 12, 2003 decision, the Board affirmed OWCP's September 10, 2002 decision.

In its August 6, 2012 decision, OWCP properly determined that appellant filed an untimely request for reconsideration. Appellant's reconsideration request was filed on July 12, 2012, more than one year after the Board's March 12, 2003 merit decision affirming OWCP's September 10, 2002 decision denying his claim. Therefore, he must demonstrate clear evidence of error on the part of OWCP in issuing its prior decision.¹⁴

Appellant has not demonstrated clear evidence of error on the part of OWCP in issuing its September 10, 2002 decision. In his July 12, 2012 reconsideration request letter, he alleged that OWCP's hearing representative was instructed to deny his claim for an October 2, 2001 work injury by several officials of the employing establishment. However, appellant did not submit any evidence in support of this assertion. He asserted that he had factual evidence, including witness statements and medical evidence which supported his claim for an October 2, 2001 work injury, but he did not submit any evidence in support of his reconsideration request. Appellant discussed his medical condition and asserted that his rights had been taken away, but such comments, in the absence of supporting argument or evidence, would not show clear evidence of error in OWCP's September 10, 2002 decision. Therefore, he did not submit the type of positive, precise and explicit evidence which manifests on its face that OWCP committed an error in its prior decision denying his claim.

For these reasons, the evidence submitted by appellant does not raise a substantial question concerning the correctness of OWCP's September 10, 2002 decision and OWCP properly determined that he did not show clear evidence of error in that decision.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of his claim on the grounds that his request was untimely filed and failed to demonstrate clear evidence of error.

¹⁴ According to OWCP procedure, the one-year period for requesting reconsideration begins on the date of the original OWCP decision, but the right to reconsideration within one year also accompanies any subsequent merit decision on the issues, including any merit decision by the Board. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4a (October 2011).

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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