



## **FACTUAL HISTORY**

On November 16, 2007 appellant, then a 28-year-old printing plant worker, filed an occupational disease claim alleging that she sustained a respiratory illness due to her federal employment. She became aware of her condition and its relationship to her job on August 6, 2007. In a July 17, 2007 report, Dr. Daniel E. Jimenez, a Board-certified occupational physician, examined appellant and observed multiple upper and lower extremity erythematous lesions. He diagnosed environmental allergies and sinusitis. Dr. Jimenez reexamined appellant on August 6, 2007 and noted faint, erratic wheezing throughout the lung fields.<sup>2</sup>

By decision dated January 9, 2008, OWCP denied appellant's claim, finding the evidence insufficient to demonstrate that a work event occurred as alleged.

Appellant requested reconsideration on February 27, 2008. She specified that her job duties involved daily use of chemical products and exposure to inks, fumes, smoke, gas and other irritants. Appellant thereafter experienced breathing problems at work on August 6, 2007.<sup>3</sup>

On April 14, 2008 OWCP modified the January 9, 2008 decision to find that appellant routinely used chemical products at work and was exposed to inks, fumes, smoke, gas and other irritants. Nonetheless, it denied her claim on the grounds that the medical evidence did not sufficiently establish that these accepted employment factors caused or contributed to a respiratory illness.

Appellant requested reconsideration on April 13, 2009 and submitted new evidence. In a November 13, 2008 report, Dr. Virginia M. Weaver, a Board-certified occupational physician, stated that appellant started working for the employing establishment in September 2005. Appellant's tasks included cleaning the presses with solvents, distributing plates and dyes and collecting and refilling ink containers. She sustained urticaria in September 2006 and asthma in August 2007 and remained symptomatic. On examination, Dr. Weaver observed left fifth digit, right upper arm and left dorsal foot erythematous papules. She commented that a printing facility was "known to have increased risk for allergy due to components in the inks" and opined that appellant's condition may be job related.

On July 10, 2009 OWCP denied modification of the April 14, 2008 decision.

Appellant requested reconsideration on July 1, 2010 and submitted new evidence. Pulmonary function tests conducted by Dr. Bahram Redjaee, a Board-certified internist, on July 21, 2008 and June 23, 2010 exhibited mild restrictive lung disease and small airways disease, respectively.

On March 15, 2011 OWCP denied modification of the July 10, 2009 decision.

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<sup>2</sup> The case record contains other medical evidence. However, these records were signed by nonphysicians, failed to address whether the alleged occupational disease was causally related to appellant's federal employment, discussed medical conditions not presently before the Board and/or were illegible.

<sup>3</sup> Appellant provided a detailed list of chemical products as well as material safety data sheets.

Appellant requested reconsideration on September 10, 2012 and submitted new evidence. In a July 13, 2011 report, Dr. Redjaee noted a history of asthma. Pulmonary function tests were normal. Dr. Redjaee remarked that appellant “used to work in the area of printing and engraving where she had a long history of exposure to films” and that her asthma was “thought to be secondary to occupational factors and exposures.” Subsequent pulmonary tests conducted on January 18, 2012 were also normal.

By decision dated January 10, 2013, OWCP denied appellant’s request for reconsideration, finding that it was not filed within one year of the March 15, 2011 decision and did not otherwise 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.<sup>4</sup> This discretionary authority, however, is subject to certain restrictions. For instance, a request for reconsideration must be filed within one year of the date of OWCP decision for which review is sought.<sup>5</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>6</sup>

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.<sup>7</sup>

To establish clear evidence of error, a claimant must submit evidence that is relevant to the issue that was decided by OWCP<sup>8</sup> is positive, precise and explicit and manifests on its face that OWCP committed an error.<sup>9</sup> The evidence must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must also shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP 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

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<sup>4</sup> See 5 U.S.C. § 8128(a); *Y.S.*, Docket No. 08-440 (issued March 16, 2009).

<sup>5</sup> 20 C.F.R. § 10.607(a). See also *D.O.*, Docket No. 08-1057 (issued June 23, 2009); *W.G.*, Docket No. 08-2340 (issued June 22, 2009).

<sup>6</sup> *E.R.*, Docket No. 09-599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>7</sup> *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 2.1602.5(a) (October 2011) “(The term ‘clear evidence of error’ is intended to represent a difficult standard.)”

<sup>8</sup> *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>9</sup> *Leona N. Travis*, 43 ECAB 227 (1991).

review of how the evidence submitted with the reconsideration request bears on the evidence previously of record.<sup>10</sup>

### **ANALYSIS**

The Board finds that appellant filed an untimely request for reconsideration. The last OWCP merit decision in this case was issued on March 15, 2011. Appellant filed an application to reopen this decision for further merit review on September 10, 2012. Because more than one year elapsed from March 15, 2011 to September 10, 2012, OWCP properly determined that the reconsideration request was not timely filed.

The Board also finds that appellant's untimely request failed to demonstrate clear evidence of error. In its March 15, 2011 decision, OWCP denied her occupational disease claim on the grounds that the medical evidence did not establish that work factors, namely daily use of chemical products and exposure to inks, fumes, smoke, gas and other irritants, caused or contributed to a respiratory condition. Thereafter, appellant submitted July 13, 2011 and January 18, 2012 medical records from Dr. Redjaee. 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. Neither of Dr. Redjaee's records, however, manifested on its face that OWCP erred in denying appellant's claim in view of the earlier, deficient case record.<sup>11</sup> Since this new evidence did not raise a substantial question as to the correctness of the March 15, 2011 decision, OWCP properly determined that the untimely request failed to establish clear evidence of error.

Appellant contends on appeal that the medical evidence was sufficient. The Board has already addressed the deficiencies of the reconsideration request.

### **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.

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<sup>10</sup> *J.S.*, Docket No. 10-385 (issued September 15, 2010); *B.W.*, Docket No. 10-323 (issued September 2, 2010).

<sup>11</sup> *See also D.G.*, 59 ECAB 455, 460 (2008) (the submission of a detailed, well-rationalized medical report, which would have created a conflict in medical opinion requiring further development if submitted before the denial was issued, is not clear evidence of error; the evidence must shift the weight of the evidence in favor of the claimant).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 10, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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