

FACTUAL HISTORY

On December 8, 2010 appellant, then a 66-year-old letter carrier, filed a traumatic injury claim, alleging that on November 22, 2010 he sustained severe pain in the left wrist, left thumb, and part of the left forearm while carrying magazines and large mail bundles on his left arm. The employing establishment challenged the claim, stating that it appeared to be occupational in nature. Appellant did not stop work.

By letter dated December 23, 2010, OWCP informed appellant of the evidence needed to develop the claim, to include a medical report that included an explanation from a physician as to how the reported work incident caused or aggravated a medical condition.

Appellant submitted a duty status report dated December 8, 2010, with an illegible signature. The report included a diagnosis of de Quervain's syndrome and indicated that appellant could return to work on December 9, 2010 with a restriction that he limit simple grasping with his left hand. In reports dated January 6, 2011, Dr. J. David Delapp, a Board-certified orthopedic surgeon, noted that appellant was right-hand dominant and had increased pain through the radial left wrist since September 2010 and had been seen in an emergency room where he was diagnosed with de Quervain's syndrome. He indicated that appellant's pain was worsening. Physical examination findings included tenderness to palpation over the left first dorsal compartment and a positive Finkelstein's test, which were consistent with de Quervain's syndrome. A left wrist x-ray demonstrated diffuse degenerative joint disease and what appeared to be an old scaphoid nonunion versus arthritic changes. Dr. Delapp advised that appellant should remain off work for one month.

By decision dated February 8, 2011, OWCP denied the claim finding that the medical evidence of record did not address how the November 22, 2010 incident caused his diagnosed condition.

An authorization for medical treatment at the Saint Francis Cabrini Emergency Center was dated and signed on December 8, 2010 by Don C. Calhoun, a station manager. An attached medical report with an illegible signature included a diagnosis of de Quervain's syndrome and advised that appellant should limit motion to the left wrist for one week but could return to work with a splint. An emergency department report from St. Francis Cabrini Hospital, with illegible signatures, included a chief complaint of hand/wrist/finger injury with pain to his left wrist. De Quervain's syndrome was diagnosed. On February 8, 2011 Dr. Delapp reiterated his findings and advised that appellant should continue off work because repetitive flexion and extension would exacerbate the de Quervain's syndrome.

On March 1, 2011 appellant submitted an occupational disease claim, stating that his work duties required carrying large amounts of mail on his left forearm which caused severe pain in his left wrist, thumb and part of his left forearm. He became aware of the condition and its relationship to his employment on November 22, 2010. An OWCP memorandum to file indicated that the occupational disease claim was a duplicate of the traumatic injury claim.

In reports dated March 11, 2011, Dr. Delapp noted that appellant's de Quervain's symptoms continued. Appellant's de Quervain's syndrome was a new acute onset problem caused by overuse activity which was consistent with the type of work he performed as a letter carrier. Dr. Delapp found that appellant could return to work on April 18, 2011. On April 15, 2011 he advised that de Quervain's syndrome had resolved and that appellant could return to full duty with no restrictions on April 18, 2011.

In correspondence dated March 9, 2012, appellant asserted that his claim should be accepted based on Dr. Delapp's reports and that his medical expenses should be paid. In a July 9, 2012 letter, OWCP stated that, based on the circumstances surrounding appellant's claim, it was converted to an occupational disease claim, but that the February 8, 2011 decision remained in effect. It advised appellant, that, if he disagreed with the decision, he should exercise his appeal rights.

On August 13, 2012 appellant requested reconsideration. He asserted that Dr. Delapp's March 11, 2011 report established that his condition was caused by overuse in his work as a letter carrier.

By decision dated September 17, 2012, OWCP denied appellant's reconsideration request on the grounds that his request was untimely filed and that he failed to present clear evidence of error on the part of OWCP.

LEGAL PRECEDENT

OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of FECA. 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.³ When an application for review is untimely, OWCP undertakes a limited review to determine whether the application presents clear evidence that its final merit decision was in error.⁴ Its regulations state that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in section 10.607 of its regulations, if the claimant's application for review shows "clear evidence of error" on the part of OWCP.⁵ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.⁶

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 that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear

³ 20 C.F.R. § 10.607(b) (2011); *see Gladys Mercado*, 52 ECAB 255 (2001).

⁴ *Cresenciano Martinez*, 51 ECAB 322 (2000).

⁵ 20 C.F.R. § 10.607 (2011).

⁶ *See Alberta Dukes*, 56 ECAB 247 (2005).

evidence of error. It is not enough to merely 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 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.⁷

OWCP procedures note that 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 an error (for example, proof that a schedule award was miscalculated). 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.⁸ The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP.⁹

ANALYSIS

By decision dated February 8, 2011, OWCP denied appellant's claim that he sustained a traumatic injury on November 22, 2010. Appellant did not request reconsideration of the February 8, 2011 decision until August 13, 2012. The Board finds that as more than one year elapsed from the February 8, 2011 merit decision to the filing of his request, it was untimely.¹⁰

The Board also finds that appellant failed to establish clear evidence of error. On reconsideration he asserted that Dr. Delapp's March 11, 2011 report established that his condition was caused by overuse in his work as a letter carrier.

The term "clear evidence of error" is intended to represent a difficult standard, and the argument provided here is not the type of positive, precise and explicit evidence which manifested on its face that OWCP committed an error in denying appellant's traumatic injury claim.¹¹ As the evidence and argument submitted are of insufficient probative value to shift the weight in favor of appellant and raise a substantial question as to the correctness of the February 8, 2011 OWCP decision that denied that appellant sustained a traumatic injury on November 22, 2010, appellant has not established that OWCP committed error by its September 17, 2012 decision.¹² The Board finds that in accordance with its internal guidelines

⁷ *Robert G. Burns*, 57 ECAB 657 (2006).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5(a) (October 2011); *James R. Mirra*, 56 ECAB 738 (2005).

⁹ *Nancy Marcano*, 50 ECAB 110 (1998).

¹⁰ 20 C.F.R. § 10.607(a) (2011).

¹¹ *Robert G. Burns*, *supra* note 7.

¹² *Nancy Marcano*, *supra* note 9.

and with applicable precedent, OWCP properly performed a limited review of the argument and evidence submitted by appellant with his reconsideration request to ascertain whether it demonstrated clear evidence of error in the February 8, 2011 decision. OWCP properly determined that it did not and denied appellant's untimely request for reconsideration.¹³

The Board, however, finds that OWCP did not properly develop appellant's March 1, 2011 occupational disease claim. The requirements for establishing entitlement for a traumatic injury and occupational disease are different. OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.¹⁴ The February 8, 2011 decision adjudicated appellant's traumatic injury claim.

OWCP regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift."¹⁵ In response to appellant's March 1, 2011 occupational disease claim, OWCP issued a July 9, 2012 letter stating his case was "converted" to an occupational disease claim; but the February 8, 2011 decision remained in effect.

The Board notes that OWCP has not issued a final decision complete with findings of fact or a statement of reasons concerning appellant's March 1, 2011 occupational disease claim.¹⁶ Upon return of the case record to OWCP, it should develop the issue of whether appellant sustained an occupational disease, to be followed by an appropriate decision on the merits of this claim.

The Board notes that on December 8, 2010 Mr. Calhoon authorized treatment at the Saint Francis Cabrini Emergency Center. The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form.

CONCLUSION

The Board finds that appellant's request for reconsideration was untimely filed and he failed to establish clear evidence of error.

¹³ 20 C.F.R. § 10.607(b) (2011); *see D.G.*, 59 ECAB 455 (2008).

¹⁴ *Id.* at § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

¹⁵ *Id.* at § 10.5(ee).

¹⁶ *See Laurie S. Swanson*, 53 ECAB 517 (2002).

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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