

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

C.K., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer

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**Docket No. 13-564
Issued: June 21, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 11, 2013 appellant filed a timely appeal from a December 18, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration as untimely filed and failing to establish clear evidence of error. Because more than 180 days elapsed from the last merit decision of July 25, 2011 to the filing of this appeal, the Board lacks jurisdiction to review the merits of her claim, pursuant to the Federal Employees' Compensation Act¹ (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 on the grounds that it was not timely filed and did not demonstrate clear evidence of error.

On appeal appellant argues that she sustained a permanent injury and OWCP erred in denying her request for further medical treatment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 16, 2000 appellant, then a 44-year-old flat sorter clerk, filed an occupational disease claim alleging subscapular bursitis with nerve impingement syndrome as employment related. She first became aware of her condition on August 30, 2000, but did not realize that it was employment related until September 13, 2000. OWCP accepted the claim for bilateral shoulder bursitis.²

On June 10, 2011 appellant filed a recurrence claim seeking medical treatment only beginning March 20, 2011 due to her accepted September 13, 2000 employment injury. She described the recurrence as occurring after a move which required packing and unpacking her belongings. Appellant alleged that the constant motion using her shoulders brought back her bilateral shoulder and neck pain.

In a June 24, 2011 letter, OWCP informed appellant to submit an opinion from her doctor providing specific details as to how her current symptoms were causally related to her employment injury, particularly as she had not received medical treatment since June 2010. Appellant was given 30 days to provide the requested information. No evidence was submitted within the allotted time.

By decision dated July 25, 2011, OWCP denied appellant's recurrence claim for medical treatment due to her accepted bilateral shoulder bursitis.

On July 28, 2011 appellant requested reconsideration. No evidence or argument was submitted in support of her reconsideration request.

By decision dated September 15, 2011, OWCP denied reconsideration without merit review.

On December 7, 2012 appellant requested reconsideration. She again requested authorization for medical treatment. Appellant noted that at the time she moved to another location all she did was unload the moving boxes and hang pictures. She argued that she continued to have complications due to her accepted employment injury.

By decision dated December 18, 2012, OWCP denied appellant's request for reconsideration finding that it was not timely filed and failed to present clear evidence of error.

LEGAL PRECEDENT

OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of FECA.³ It will not review a decision denying or terminating a

² Appellant resigned from the employing establishment effective June 14, 2003.

³ See *J.W.*, 59 ECAB 507 (2008); *Mary A. Ceglia*, 55 ECAB 626 (2004).

benefit unless the application for review is filed within one year of the date of that decision.⁴ When an application for review is untimely, OWCP undertakes a limited review to determine whether the application presents clear evidence that OWCP's final merit decision was in error.⁵ Its procedures state that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth under section 10.607 of OWCP regulations,⁶ if the claimant's application for review shows clear evidence of error on the part of OWCP.⁷ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.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. Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear 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.¹⁰

OWCP's 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.¹¹ The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP.¹²

⁴ 20 C.F.R. § 10.607; *see B.W.*, Docket No. 10-323 (issued September 2, 2010); *A.F.*, 59 ECAB 714 (2008); *Gladys Mercado*, 52 ECAB 255 (2001).

⁵ *D.G.*, 59 ECAB 455 (2008); *Cresenciano Martinez*, 51 ECAB 322 (2000).

⁶ 20 C.F.R. § 10.607.

⁷ *See M.L.*, Docket No. 09-956 (issued April 15, 2010); *Robert G. Burns*, 57 ECAB 657 (2006).

⁸ *Andrew Fullman*, 57 ECAB 574 (2006); *Alberta Dukes*, 56 ECAB 247 (2005).

⁹ *F.R.*, Docket No. 09-575 (issued January 4, 2010); *S.D.*, 58 ECAB 713 (2007); *Joseph R. Santos*, 57 ECAB 554 (2006).

¹⁰ *J.S.*, Docket No. 10-385 (issued September 15, 2010); *D.D.*, 58 ECAB 206 (2006); *Robert G. Burns*, *supra* note 7.

¹¹ *James Mirra*, 56 ECAB 738 (2005); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsideration*, Chapter 2.1602.3(c) (October 2011).

¹² *See M.L.*, *supra* note 7; *G.H.*, 58 ECAB 183 (2006); *Jack D. Johnson*, 57 ECAB 593 (2006).

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.¹³ A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.¹⁴ As appellant's December 10, 2012 request for reconsideration was submitted more than one year after the last merit decision, issued on September 15, 2011, it was untimely. Consequently, she must demonstrate clear evidence of error by OWCP in denying her claim for a recurrence of "medical treatment only."¹⁵

The Board finds that appellant's request for reconsideration fails to demonstrate clear evidence of error. The request does not show on its face that OWCP's denial of authorization for medical benefits was erroneous. In addition appellant presented no evidence with her request or her initial claim for a recurrence of "medical treatment only." She has not shown how OWCP committed any error in denying her claim. Nothing in appellant's December 7, 2012 request for reconsideration remotely suggests that OWCP's September 15, 2011 decision was erroneous in finding that she had not established that her recurrence of "medical treatment only" was due to her accepted employment injury. Consequently, OWCP properly denied her reconsideration request as it was untimely and failed to establish clear evidence of error.

On appeal appellant argues that OWCP denied her claim because it erroneously attributed her claim for a recurrence of "medical treatment only" to the packing and unpacking performed as a result of her move. As noted, the only issue on appeal is whether OWCP clearly erred in denying merit review. For reasons stated above, the Board finds that the evidence does not establish clear evidence of error on the part of OWCP.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration as it was untimely filed and failed to establish clear evidence of error.

¹³ 20 C.F.R. § 10.607(a).

¹⁴ *Robert F. Stone*, 57 ECAB 393 (2005).

¹⁵ 20 C.F.R. § 10,607(a); *see D.G., supra* note 5; *Debra McDavid*, 57 ECAB 149 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 18, 2012 is affirmed.

Issued: June 21, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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