



On appeal, appellant contends that her claim was improperly denied, that various errors were made by OWCP in the development of her claim and that the medical evidence supported her claim.

### **FACTUAL HISTORY**

The case has previously been before the Board. By order dated June 24, 2008, the Board granted appellant's request to withdraw her appeal docketed as No. 08-719.<sup>2</sup> In a decision dated June 9, 2009, the Board affirmed OWCP's August 1, 2007 merit decision denying her claim for a recurrence of disability commencing March 1996.<sup>3</sup> In a decision dated June 2, 2011, the Board found that OWCP properly denied appellant's request for reconsideration without further merit review of the claim.<sup>4</sup> The history of the case as set forth in the Board's prior decisions is incorporated by reference.

On November 3, 2012 appellant filed a request for reconsideration. She detailed communication problems with OWCP. Appellant noted that documents kept going back and forth because she moved and that her phone rarely had message space. She noted problems obtaining records and information and indicated that not all of her medical records were noted in previous decisions.

By decision dated December 12, 2012, OWCP denied appellant's request for reconsideration finding that it was not timely filed and failed to establish clear evidence of error

By letter received January 9, 2013, appellant again requested reconsideration. She disputed the finding that her condition resolved on May 19, 1994 and contended that the medical evidence indicated that her injury was likely to recur. Appellant discussed the medical evidence of record, alleged that all the medical evidence was not of record and discussed various problems with OWCP. She submitted a February 19, 2003 report with regards to her mental health, a February 25, 2003 Compensation and Pension Examination Report and an August 21, 1997 medical report upon which she wrote comments.

By decision dated February 28, 2013, OWCP denied reconsideration finding appellant's request for reconsideration was not timely filed and failed to establish clear evidence of error.

### **LEGAL PRECEDENT**

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

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<sup>2</sup> Docket No. 08-719 (issued June 24, 2008).

<sup>3</sup> Docket No. 08-2067 (issued June 9, 2009), *petition for recon. denied*, Docket No. 08-2067 (issued September 2, 2009). Appellant's claim was accepted for bilateral tenosynovitis of the hands and wrists, with appellant resigning from federal employment on May 9, 1994.

<sup>4</sup> Docket No. 10-2014 (issued June 2, 2011), *petition for recon. denied*, Docket No. 10-2014 (issued October 24, 2011).

decision.<sup>5</sup>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.<sup>6</sup>

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.<sup>7</sup> OWCP regulations and procedures 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.<sup>8</sup>

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>9</sup> The evidence must be positive, precise and explicit and must manifest on its face that OWCP committed an error.<sup>10</sup> Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.<sup>11</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>12</sup> 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.<sup>13</sup> 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 shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.<sup>14</sup> A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.<sup>15</sup>

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<sup>5</sup>20 C.F.R. § 10.607(a).

<sup>6</sup>5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

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

<sup>8</sup>*Id.* at § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3d (January 2004). OWCP procedures further provide 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. *Id.* at Chapter 2.1602.3c.

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

<sup>10</sup>*See Leona N. Travis*, 43 ECAB 227, 240 (1991).

<sup>11</sup>*See Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

<sup>12</sup>*See supra* note 10.

<sup>13</sup>*See Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

<sup>14</sup>*Leon D. Faidley, Jr.*, *supra*note 6.

<sup>15</sup>*Robert F. Stone*, 57 ECAB 292 (2005).

## 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.<sup>16</sup> A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.<sup>17</sup> Appellant's November 3, 2012 and January 9, 2013 requests for reconsideration were submitted more than one year after the Board's merit decision of June 9, 2009. They were untimely filed. Consequently, appellant must establish clear evidence of error by OWCP in denying her claim for compensation.

On reconsideration, appellant has not presented any new evidence that she sustained a recurrence of disability commencing March 1996. She submitted records related to her mental health, but her claim was never accepted by OWCP for an emotional condition. Appellant also submitted medical reports dated February 25, 2003 and August 21, 1997, but these reports were already in the record. In order to establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>18</sup> Appellant has not submitted evidence that shifts the weight of the evidence in her favor or that establishes clear error by OWCP in the denial of her recurrence claim. Consequently, she has not established clear evidence of error.

As the evidence submitted by appellant is insufficient to raise a substantial question as to the correctness of the last merit decision, she has not established clear evidence of error.

On appeal, appellant argued the merits of her case. However, as noted, the Board only has jurisdiction over OWCP's December 12, 2012 and February 28, 2013 nonmerit decisions and is therefore precluded from conducting a merit review.

## CONCLUSION

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

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

<sup>17</sup> *Robert F. Stone*, 57 ECAB 292 (2005).

<sup>18</sup> *Howard Y. Miyashiro*, 51 ECAB 253 (1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 28, 2013 and December 12, 2012 are affirmed.

Issued: September 5, 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