United States Department of Labor
Employees' Compensation Appeals Board

S.W., Appellant	)	
and	)	
U.S. POSTAL SERVICE, POST OFFICE, Colorado Springs, CO, Employer	)	**Docket No. 14-1067** **Issued: August 18, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 8, 2014 appellant filed a timely appeal of the November 5, 2013 decision of the Office of Workers' Compensation Programs (OWCP) which denied her reconsideration request on the grounds that it was untimely filed and failed to present clear evidence of error. Because more than 180 days elapsed from the most recent merit decision of July 9, 2012 to the filing of this appeal on April 8, 2014, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether OWCP properly determined that appellant's request for reconsideration was not timely filed and failed to present clear evidence of error.

FACTUAL HISTORY

On August 10, 2011 appellant, then a 55-year-old postmaster, filed a Form CA-2, occupational disease claim alleging that she was verbally abused by her supervisor which caused anxiety and depression. She became aware of her condition and realized it was causally related to her employment on April 3, 2007. Juan Munoz, manager of postal service operations, noted that appellant first reported her condition to a supervisor on August 10, 2011 and did not stop

work. He noted that appellant was last exposed to the conditions claimed to have caused her illness in 2008.

By letter dated August 12, 2011, OWCP requested additional information from appellant noting that the evidence was insufficient to establish her claim. It also requested that the employing establishment provide comments from a knowledgeable supervisor addressing her allegations.

In a statement dated August 2, 2011, appellant stated that in January 2007 she started work at the employing establishment and that Postmaster Kyle Collinsworth was aggressive and screamed and ridiculed the entire staff. She became depressed and anxious and sought medical treatment. Appellant submitted medical records from March 26 to May 18, 2007 for treatment of physical and emotional conditions after a motor vehicle accident.

On August 26, 2011 the employing establishment controverted appellant's claim. It asserted that the claim was not timely as appellant filed the Form CA-2 over three years after the date of the injury on April 3, 2007 when she alleged that the postmaster was aggressive and screamed and ridiculed her. The employing establishment noted that there were no postmasters at this station only station managers and supervisors.

In a statement dated September 8, 2011, appellant alleged that Mr. Collinsworth yelled at her and used derogatory tones on a daily basis and she was fearful. She reported being in a car accident on March 29, 2007 and Mr. Collinsworth had threatened her and instructed her not to file a compensation claim. Appellant alleged that Mr. Collinsworth threatened and yelled at her when a snow storm prevented her staff of letter carriers from delivering mail in April 2007. She filed an Equal Employment Opportunity (EEO) complaint in August 2007 and took a temporary assignment in the fall of 2008. Appellant submitted a September 7, 2011 letter from a social worker who diagnosed post-traumatic stress syndrome due to verbal and emotional abuse by her former supervisor. In a November 22, 2011 statement, the employing establishment denied her allegations, asserting that they were vague and nonspecific. It also noted that Mr. Collinsworth denied acting inappropriately.

In a December 8, 2011 decision, OWCP denied appellant's claim. It found that the claim was not timely filed in accordance with 5 U.S.C. § 8122.

Appellant requested reconsideration. She asserted in a statement and an affidavit that she promptly notified her superiors of her injuries shortly after they occurred and provided her superiors with medical documentation about her injuries and medical restrictions. Appellant could not explain why her superiors failed to fill out the appropriate OWCP forms.

In a decision dated July 9, 2012, OWCP denied modification of the December 8, 2011 decision.

On March 19, 2013 appellant requested reconsideration. She asserted that her superiors were placed on notice of her work-related condition between March and July 2007. In a March 18, 2013 affidavit, appellant indicated that her sister wrote to Mr. Collinsworth in April 2007 about her job injuries and Mr. Collinsworth acknowledged receipt of the letter. She further noted informing Keith Reid and Selwyn Epperson, employing establishment managers, in

May and August 2007 of her mental and physical injuries. Appellant submitted a January 24, 2012 letter from a social worker who treated her for post-traumatic stress disorder.

By a decision dated April 3, 2013, OWCP denied appellant's reconsideration request on the grounds that her request was insufficient to warrant review of the prior decision.

On September 9, 2013 appellant requested reconsideration. Her representative asserted that she placed her immediate supervisor and others in the chain of command/reporting structure, on verbal notice within 30 days after her injury of her desire to file a compensation claim for injuries sustained on the job due to stress and harassment of her immediate supervisor, Mr. Collinsworth. Appellant referenced affidavits in which she asserted that Mr. Collinsworth was on notice of her work injury through their discussions and that he became furious that she had reported her injuries. Her immediate supervisor had actual knowledge, including verbal notification of the injury within 30 days and asserted that Mr. Collinsworth sent an e-mail on April 7, 2007 rejecting her requests to report a work injury. Appellant submitted an e-mail dated April 7, 2007 from Mr. Collinsworth which stated "Workplace stress is not a reportable injury for management. You need to utilize your annual leave, or sick leave under Family Medical Leave Act and reference your accident." Handwritten on the e-mail was "no way in hell." Appellant's representative asserted that this communication demonstrated that the employer was reasonably on notice of appellant's on-the-job injury and expressed her desire to file a claim for workplace stress and supports that Mr. Collinsworth told her that he would never approve an OWCP claim for her. He stated that "no way in hell" reflected appellant's verbal conversation with Mr. Collinsworth when she was told that she would not be allowed to file a claim. The representative asserted that the communications between appellant and her immediate supervisor were sufficient to put the employing establishment on notice of appellant's on-the-job injury.

By decision dated November 5, 2013, OWCP denied appellant's request for reconsideration as it was untimely and did not 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.[1] This discretionary authority, however, is subject to certain restrictions. For instance, a request for reconsideration must be received within one year of the date of the OWCP decision for which review is sought.[2] Imposition of this one-year filing limitation does not constitute an abuse of discretion.[3]

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, OWCP must nevertheless undertake a limited review to determine whether it establishes clear evidence of

[1] 5 U.S.C. § 8128(a); *Y.S.*, Docket No. 08-440 (issued March 16, 2009).

[2] 20 C.F.R. § 10.607(a).

[3] *E.R.*, Docket No. 09-599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

error. If an application demonstrates clear evidence of error, OWCP will reopen the case for merit review.[4]

To establish clear evidence of error, a claimant must submit evidence that is relevant to the issue that was decided by OWCP,[5] is positive, precise, and explicit, and manifests on its face that OWCP committed an error.[6] 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's 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 review of how the evidence submitted with the reconsideration request bears on the evidence previously of record.[7]

ANALYSIS

The Board finds that OWCP properly determined that appellant failed to file a timely request for reconsideration. On September 9, 2013 appellant requested reconsideration of a decision denying her emotional condition claim on the grounds that the evidence failed to demonstrate that her claim was timely filed in accordance with section 8122 of FECA.[8] OWCP rendered its most recent merit decision on July 9, 2012. The reconsideration request of September 9, 2013 was made more than one year after the July 9, 2012 merit decision. Accordingly, appellant's request for reconsideration was not timely filed.[9] Consequently, she must demonstrate clear evidence of error by OWCP in denying her claim for compensation.

The Board finds that appellant has not established clear evidence of error on the part of OWCP. On reconsideration, appellant reiterated her previous contentions that she placed her immediate supervisor and others in the chain of command had verbal notice, within 30 days after her injury, of her desire to file a compensation claim for injuries sustained on the job due to

[4] *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 2.1602.3(c) (September 2011) (the term "clear evidence of error" is intended to represent a difficult standard).

[5] *Dean D. Beets*, 43 ECAB 1153 (1992).

[6] *Leona N. Travis*, 43 ECAB 227 (1991).

[7] *J.S.*, Docket No. 10-385 (issued September 15, 2010); *B.W.*, Docket No. 10-323 (issued September 2, 2010).

[8] 5 U.S.C. § 8122. Section 8122(a) provides that an original claim for compensation for disability or death must be filed within three years after the injury or death. Section 8122(b) provides that, in latent disability cases the time limitation does not begin to run until the claimant is aware or by the exercise of reasonable diligence should have been aware, of the causal relationship between the employment and the compensable disability. Even if a claim is not timely filed within the three-year period of limitation, it would still be regarded as timely under section 8122(a)(1) if "the immediate superior had actual knowledge of the injury or death within 30 days" or written notice of the injury as specified in section 8119 was provided within 30 days.

[9] 20 C.F.R. § 10.607(a).

stress and harassment by her immediate supervisor, Mr. Collinsworth. Appellant referenced affidavits in which she asserted that Mr. Collinsworth was on notice of her work injury through their discussions. These affidavits were previously considered by OWCP. While appellant addressed her disagreement with OWCP's denial of the claim, she has not explained how her repetition of previous stated allegations raise a substantial question as to the correctness of OWCP's decision. OWCP properly found that appellant's statement of September 9, 2013 did not establish clear evidence of error.

On reconsideration, appellant also submitted additional evidence. She submitted an e-mail dated April 7, 2007 from Mr. Collinsworth which stated "Workplace stress is not a reportable injury for management. You need to utilize your annual leave, or sick leave under FMLA and reference your accident." Appellant asserted that the April 7, 2007 e-mail from Mr. Collinsworth demonstrated actual knowledge by her employing establishment of her claimed emotional condition. She indicated that this e-mail was sent after appellant asked to report a compensable injury. However, the context of Mr. Collinsworth's e-mail is vague and unclear with regard to any particulars of a specific workplace illness under FECA. Mr. Collinsworth references an "accident" and "workplace stress" but there is insufficient context in this e-mail to show that he had actual knowledge of a specific on-the-job injury or illness. Thus, this e-mail does not establish that appellant's supervisor was reasonably on notice of a work-related emotional condition.[10] Thus, it is insufficient 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 for which review is sought. Knowledge merely of an employee's illness is not sufficient to establish actual knowledge and timeliness, it must be shown that the circumstances were such as to put the supervisor on notice that the alleged injury was actually related to the employment or that the employee attributed it thereto.[11] Because the e-mail fails to show actual knowledge of a possible causal relationship between appellant's employment and her emotional condition, the Board finds that it fails to show clear evidence of error in OWCP's finding that her claim for this condition was untimely filed.[12]

Therefore, the evidence is insufficient to raise a substantial question as to the correctness of OWCP's decision. This evidence is not so positive, precise and explicit that it manifests on its face that OWCP committed an error. The Board notes that clear evidence of error is intended to represent a difficult standard. The submission of a detailed well-rationalized medical report

[10] *See Linda J. Reeves*, 48 ECAB 373 (1997) (the employee submitted a statement from a former supervisor that established that he had some knowledge of her complaints but the statement was not sufficient to establish that her immediate superior had actual knowledge of a work-related injury as the statement only made vague reference to her health and did not indicate that she sustained any specific employment-related injury. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death).

[11] *See id.; Roseanne S. Allexenberg*, 47 ECAB 498 (1996) (where the Board held that knowledge of an employee's illness is not sufficient to establish actual knowledge and timeliness of a claim. It must be shown that the circumstances were such as to put the supervisor on notice that the alleged injury was actually related to the employment or that the employee attributed it thereto).

[12] *See Kathryn A. Bernal*, 38 ECAB 470 (1987) (untimely claims barred by statute of limitations unless immediate supervisor had actual knowledge of the injury within 30 days).

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.[13]

On appeal, appellant asserted that OWCP erred in finding that her claim was untimely filed and reiterated her contentions that her immediate supervisor and others in the chain of command had actual verbal notice within 30 days of her injury that she desired to file a compensation claim. As explained, these assertions do not constitute clear evidence of error. Also submitted on appeal was a September 6, 2013 EEO decision and other new evidence. However, the Board may not consider new evidence for the first time on appeal.[14] Also, as noted, the Board does not have jurisdiction over the merits of the claim.

CONCLUSION

The Board finds that appellant's request for reconsideration was untimely filed and did not demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[13] *D.G.*, 59 ECAB 455 (2008).

[14] 20 C.F.R. § 501.2(c).