

FACTUAL HISTORY

On April 23, 2012 appellant, then a 57-year-old electronics mechanic, filed an occupational disease claim alleging that he developed carpal tunnel syndrome in the performance of duty. He first became aware of his condition and its relation to his federal employment on March 20, 2012. Appellant did not stop work.

On April 27, 2012 OWCP notified appellant of the factual and medical evidence needed to establish his claim. On May 1, 2012 it received a description of his position and certain personnel records.

By decision dated May 31, 2012, OWCP denied appellant's claim. It found that he did not submit evidence identifying work events that contributed to his condition.

On June 19, 2012 appellant requested an oral hearing. In an October 31, 2012 statement, he advised that he was assigned to "demil" work on outdated equipment from December 2011 to March 2012. Appellant stated that such work required him to destroy equipment by hand with the use of screwdrivers, pliers, hammers, diagonal cutters, wrenches, scrappers, power screw drivers, and nut drivers. He further stated that cutting large diameter cables put pressure on his hands and caused pain. Appellant was referred to a neurologist who diagnosed carpal tunnel syndrome.

In a March 14, 2012 report, Dr. Adhikari Reddy, a Board-certified neurologist, found that appellant's symptoms were consistent with bilateral carpal tunnel syndrome. He advised that appellant had numbness and tingling of both hands that increased within the previous three months. Appellant worked with his hands using cutters and pliers. He stated that appellant had difficulty sleeping at night as a result of his symptoms. Dr. Reddy also advised that appellant had a history of diabetes, hypertension and hyperlipidemia. In an accompanying March 15, 2014 electromyogram (EMG) study, Dr. Reddy listed an impression of bilateral carpal tunnel syndrome, greater on the right. He also noted that delayed conduction was consistent with neuropathy that can be seen in diabetes mellitus.

Appellant submitted treatment records from the employing establishment's health unit. In March 21, 2012 treatment notes, Dr. Anna Abrigo, a pediatrician, noted that appellant had numbness and tingling in both hands. Appellant's symptoms kept him awake at night and were onset by gripping hand tools. Dr. Abrigo opined that the repetitive work of cutting cables was the cause of his carpal tunnel. She stated that he related that his symptoms began six months earlier. Other treatment notes related appellant's bilateral carpal tunnel syndrome diagnosis and advised that he was awaiting surgery. In an April 17, 2012 work status report from the employing establishment, appellant was advised to avoid strenuous gripping and strenuous use of his hands.

A telephone hearing was held on November 14, 2012. Appellant described the work duties that he believed caused his carpal tunnel. Since December 2012, he was involved in "demil" work which included destroying electronic equipment used by the military. Appellant stated that this work put considerable pressure on his hands. Following the hearing, he submitted a June 25, 2012 report from Dr. Udaya G. Moti, an internist, who noted that an EMG was

positive for carpal tunnel that was particularly more severe on the right side. In a November 27, 2012 addendum, Dr. Moti noted that appellant's job required fine manipulation. He opined that appellant's carpal tunnel could be related to his occupation.

By decision dated January 4, 2013, an OWCP hearing representative set aside the May 31, 2012 decision. She found that appellant established the work factors that he believed contributed to his condition. The case was remanded for further development. The hearing representative directed that he be referred for a second opinion.

On January 23, 2013 OWCP referred appellant to Dr. Alexander Doman, a Board-certified orthopedic surgeon, for a second opinion. It asked Dr. Doman to address appellant's diagnoses. OWCP also asked if appellant's work duties were directly related to the diagnosed condition, and, if so, how the duties either caused or aggravated the diagnosed condition.²

In a February 26, 2013 report, Dr. Doman noted examining appellant on February 14, 2013. He reviewed the employment history and advised that appellant related to him that he began to experience pain and tingling in his hands when he began demolition work. Dr. Doman reported findings on examination and stated that x-rays of the wrists were normal; but that nerve conduction studies indicated significant median nerve compression of the wrist on both left and right side consistent with severe carpal tunnel syndrome. He diagnosed severe bilateral tunnel syndrome. Dr. Doman opined that appellant's carpal tunnel was directly related to his diabetes and not the physical requirements of his federal employment. He attributed appellant's carpal tunnel to his longstanding diabetes mellitus, which he stated was a well-known cause in the development of carpal tunnel syndrome.

By decision dated March 5, 2013, OWCP denied appellant's claim. It found that the weight of the medical evidence, as represented by Dr. Doman, did not establish that appellant's claimed carpal tunnel syndrome was caused or contributed to his work duties.

On June 5, 2014 appellant, through his attorney, requested reconsideration. Counsel asserted that OWCP should have sought clarification from Dr. Doman regarding whether work conditions contributed in any way to the diagnosed condition. He stated that Dr. Doman was asked if carpal tunnel syndrome was "directly related" to work factors, and not whether work factors were a contributing factor to the condition.

By decision dated June 25, 2014, OWCP denied appellant's request as untimely. It found that there was no evidence of clear error in the denial of his claim.

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

² A January 7, 2013, statement of accepted facts provided to Dr. Doman, advised that the physical requirements of appellant's position included carrying and lifting up to 40 pounds and frequent standing, walking, bending, crouching, reaching, stooping and climbing.

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 section 10.607 of OWCP 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 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 establish clear evidence of error, the evidence submitted 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.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

The Board finds that OWCP properly determined that appellant failed to file a timely request for reconsideration. The most recent OWCP merit decision in this case was issued on March 5, 2013. Appellant did not request reconsideration until June 5, 2014, more than one year

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

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

⁵ 20 C.F.R. § 10.607.

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

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).

after the March 5, 2013 merit decision. Therefore, it was not timely filed. Consequently, appellant must establish clear evidence of error by OWCP in denying his claim for compensation.

The Board finds that appellant has not established clear evidence of error on the part of OWCP in the denial of his occupational disease claim. Before OWCP and also on appeal, appellant's counsel contends that Dr. Doman's report should be discredited because OWCP asked if the diagnosed condition, carpal tunnel syndrome, was "directly related" to factors of appellant's employment, instead of whether the work factors contributed to his diagnosed condition. He asserts that a condition is compensable even if the work factors did not cause the diagnosed condition as long as the work-related factors accelerated, aggravated or precipitated a preexisting condition.¹⁰ Counsel also contends that Dr. Doman should have been provided with OWCP's definition of acceleration or aggravation. The Board finds that these assertions are insufficient to establish clear evidence of error.

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.¹¹ Although Dr. Doman was asked if the physical requirements of appellant's work were directly related to his diagnosed condition, OWCP also asked him to address whether appellant's federal duties had aggravated his diagnosed conditions. In response, he clearly opined that appellant's carpal tunnel was attributable to his diabetes. The Board finds that the questions posed by OWCP to Dr. Doman do not establish clear evidence of error in these circumstances. Counsel did not cite any authority supporting that OWCP's failure to provide its definition of acceleration or aggravation to Dr. Doman is sufficient to meet this difficult standard and establish clear evidence of error.¹²

The argument submitted by counsel is insufficient raise a substantial question as to the correctness of the March 5, 2013 OWCP decision. Appellant has not established that OWCP committed error by its June 25, 2014 decision. Consequently, OWCP properly found that the untimely reconsideration request did not establish clear evidence of error.

¹⁰ See, e.g., *Beth P. Chaput*, 37 ECAB 158, 161 (1985).

¹¹ *Supra* note 7.

¹² The Board notes that OWCP procedures do not affirmatively mandate that such definitions be sent to second opinion physicians but instead contemplate that OWCP will provide information appropriate to the question at issue. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.7(f) (September 2009) (when OWCP needs to define such terms as aggravation, precipitation or acceleration, he or she should do so in a letter to the physician); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, 2.810.9(a) (September 2010) (the second opinion specialist should generally be provided with a statement of accepted facts, a list of pertinent questions or issues to be addressed, and copies of pertinent medical reports from the case record); Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.3(c) (July 2011) (the second opinion physician should be provided with the description of the reasons for requesting the examination, a list of questions to be resolved, a statement of accepted facts, and copies of pertinent medical reports).

CONCLUSION

The Board finds that appellant's request for reconsideration was untimely filed and that he failed to establish clear evidence of error. OWCP therefore properly denied a merit review of his claim.

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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