

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

C.G., Appellant)

and)

DEPARTMENT OF THE INTERIOR,)
NATIONAL PARK SERVICE,)
Washington, DC, Employer)

Docket No. 13-1887
Issued: January 7, 2014

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 13, 2013 appellant filed a timely appeal from a June 20, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

¹ The last merit decision in this case was dated July 14, 2011 decision, which denied her traumatic injury claim. For final adverse OWCP decisions issued prior to November 19, 2008, a claimant had up to one year to file an appeal. 20 C.F.R. § 501.3(d)(2). For final adverse decisions of OWCP issued on or after November 19, 2008, a claimant must file an appeal within 180 days of the decision. 20 C.F.R. § 501.3(e). Because more than 180 days has elapsed between the most recent merit decision dated July 14, 2011 to the filing of this appeal on August 13, 2013, the Board lacks jurisdiction to review the merits of this case.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits on the grounds that her request for reconsideration was not timely filed and did not establish clear evidence of error.

FACTUAL HISTORY

On June 9, 2011 appellant, then a 20-year-old park police volunteer, filed a traumatic injury claim alleging that on June 5, 2011 she experienced pain and swelling in her left knee, ankle and foot when a horse tripped and fell on her leg.

In a letter dated June 13, 2011, OWCP advised appellant that insufficient evidence was received to establish her traumatic injury claim. It requested that she submit additional evidence, within 30 days.

In a June 5, 2011 hospital report, Dr. James Street, a Board-certified surgeon, related appellant's complaints of left leg pain after a horse rolled over on her leg. He noted that an x-ray of the left leg revealed no acute fracture.

In a decision dated July 14, 2011, OWCP accepted that the June 5, 2011 incident occurred as alleged. It denied appellant's claim finding insufficient medical evidence to establish a firm medical diagnosis as a result of the accepted incident.

In an appeal request form dated January 15, 2013, received by OWCP on March 26, 2013, appellant requested reconsideration. She submitted emails between her mother and the employing establishment and a June 5, 2011 case incident report.

In a June 5, 2011 radiology report, Dr. Arnold Raizon, a Board-certified diagnostic radiologist, noted no acute fracture or dislocation of appellant's left tibia or fibula. The bones were normally mineralized and joint spaces were normal.

In a June 5, 2011 radiology report, Dr. Joseph Hutter, a Board-certified diagnostic radiologist, stated that examination of the ankle did not demonstrate any evidence of acute fracture or dislocation.

In a June 5, 2011 hospital discharge report, Dr. Frank Albino, a Board-certified internist, related appellant's complaints of left leg pain. He advised her to follow-up with her primary care physician.

By decision dated June 20, 2013, OWCP denied appellant's reconsideration request on the grounds that it was untimely filed and that she failed to present clear evidence of error on the part of OWCP.

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 decision.³ The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the discretionary authority granted OWCP under section 8128(a) of FECA.⁴ OWCP may still reopen a claimant's case for merit review, even if the claimant's application was not filed within the one-year time limitation, if claimant's application demonstrates clear evidence of error on the part of OWCP in its most recent merit decision.

To establish clear evidence of error, a claimant must submit evidence relevant to the issue decided by OWCP. The evidence must be positive, precise and explicit, and it must manifest on its face that OWCP committed an error.⁵ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.⁶ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.⁷ The evidence submitted must not only be of sufficient probative value to create a conflicting 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.⁸ This entails a limited review by OWCP of the evidence previously of record and whether the new evidence demonstrates clear evidence of error on the part of OWCP.⁹ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹⁰ The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP such that it improperly denied merit review in the face of such evidence.¹¹

ANALYSIS

By decision dated July 14, 2011, OWCP denied appellant's traumatic injury claim based on insufficient medical evidence. Appellant's reconsideration request was dated January 15, 2013 but was not received by OWCP until March 26, 2013. Because more than one year elapsed

³ 20 C.F.R. § 10.607(a).

⁴ 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁵ 20 C.F.R. § 10.607(b); *Fidel E. Perez*, 48 ECAB 663 (1997).

⁶ *Jimmy L. Day*, 48 ECAB 652 (1997).

⁷ *Id.*

⁸ *Annie L. Billingsley*, 50 ECAB 210 (1998).

⁹ *Id.*

¹⁰ *Nelson T. Thompson*, 43 ECAB 919 (1992).

¹¹ *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765 (1993).

from the July 14, 2011 merit decision to the filing of her reconsideration request, the Board finds that her March 26, 2013 request was untimely.¹²

The Board also finds that OWCP conducted a limited review of the claim and properly determined that appellant failed to establish clear evidence of error. Appellant's claim was denied by decision dated July 14, 2011 because she had not submitted sufficient evidence to establish a firm medical diagnosis related to the accepted incident. She submitted various hospital and diagnostic reports indicating that she was treated and discharged by the hospital on June 5, 2011. The radiology reports confirmed that appellant had not sustained any fracture of her left leg or ankle. The term clear evidence of error is intended to represent a difficult standard. The evidence submitted does not manifest on its face that OWCP committed an error in denying appellant's claim.¹³ The Board finds that appellant did not submit any evidence or argument of sufficient probative value to shift the weight in favor of her claim or to raise a substantial question as to the correctness of the July 14, 2011 denial decision. The Board finds that OWCP properly denied her reconsideration request.

On appeal, appellant alleged that her traumatic injury claim should be accepted and submitted additional medical evidence. As previously stated, the Board does not have jurisdiction over the merits of the case, but can only address whether OWCP properly denied her reconsideration request. The Board's jurisdiction is limited to a review of the evidence that was before OWCP at the time it issued its final decision. The Board may not consider the additional medical evidence submitted for the first time on appeal.¹⁴

CONCLUSION

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

¹² 20 C.F.R. § 10.607(a).

¹³ *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁴ *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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