

FACTUAL HISTORY

On September 24, 2007 appellant, then a 38-year-old mail carrier, filed a traumatic injury claim alleging that she sustained a closed head injury, back pain and an injury to her left lower leg in the performance of duty. The employing establishment controverted the claim.

By decision dated November 9, 2007, OWCP denied appellant's claim after finding that she had not established that the injury occurred at the time, place and in the manner alleged. It noted that she began working full duty on September 21, 2007 after being out of work due to an employment injury under another file number.² OWCP found that appellant's statement varied from those of witnesses.

On November 15, 2007 appellant requested reconsideration. In a decision dated April 18, 2008, OWCP denied modification of its November 9, 2007 decision.

On April 17, 2009 appellant, through her representative, again requested reconsideration. By decision dated February 19, 2010, OWCP modified its April 18, 2008 decision and accepted that the September 21, 2007 incident occurred as alleged. It found, however, that the medical evidence was insufficient to establish that she sustained a diagnosed condition causally related to the accepted employment incident.

On January 3, 2011 OWCP received factual and medical evidence from appellant, who resubmitted her statements describing her injury dated September 21 and November 8 and 11, 2007 and statements from the employing establishment dated August 28, September 24 and October 11, 2007. Appellant further resubmitted July 2007 notices of suspension from the employing establishment, a letter to the Merit Systems Protection Board and the Equal Employment Opportunity Commission, a September 21, 2007 emergency room report and October 3, 2007 and January 7, 2008 reports from Dr. Antoine Roberts, a Board-certified orthopedic surgeon.

In a letter dated July 19, 2012 prepared in response to a telephone call, OWCP advised appellant that it had denied her claim in 2010.

On July 16, 2013 appellant requested reconsideration. She asserted that she had previously requested reconsideration of the February 19, 2010 decision by certified mail dated December 21, 2010 and signed received by OWCP on December 29, 2010. Appellant reviewed the evidence previously submitted and considered by OWCP in its April 18, 2008 decision. She related that on September 21, 2007 she informed the fire department, the emergency room physicians and Dr. Roberts that she had injured her back, shoulder, leg and neck when she fell hitting the pavement. Appellant described in detail actions taken by the employing establishment after she returned to work in June 2007. She alleged error by her employer in finding her in violation of a last chance agreement and not abiding by her medical restrictions under another file number. Appellant maintained that the employing establishment's actions in returning her to work without restrictions caused her September 21, 2007 injury.

² The record reveals that OWCP accepted appellant's occupational disease claim for lumbar strain and major depressive disorder, to which it assigned File No. xxxxxx632.

With her request for reconsideration, appellant resubmitted a September 23, 2007 medical report and a copy of a return receipt from OWCP indicating that it had received correspondence from her on December 29, 2010.

By decision dated October 8, 2013, OWCP denied appellant's request for reconsideration as the request was untimely and did not show clear evidence of error. It noted that she argued that she had requested reconsideration on December 21, 2010 and, in support of her contention, had submitted a December 29, 2010 certified mail receipt. OWCP acknowledged that it had received documents from appellant but determined that there was no request for reconsideration accompanying the evidence.

On appeal appellant contends that she timely requested reconsideration on December 21, 2010. She asserts that she received a return receipt signed by OWCP on December 29, 2010.

LEGAL PRECEDENT

OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a) of FECA.³ As once such limitations, 20 C.F.R. § 10.607 provides that an application for reconsideration must be sent within one year of the date of the OWCP decision for which review is sought. OWCP will consider an untimely application only if the application demonstrates clear evidence of error on the part of OWCP in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.⁴

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 of a miscalculation in a schedule award). Evidence such as a detailed, well-rationalized medical report which, if submitted prior to the denial, would have created a conflict in medical opinion requiring further development, is not clear evidence of error and would not require a review of the case on the Director's own motion.⁵ 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 it committed an error.⁶

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.⁷ A right to reconsideration within one year also

³ 5 U.S.C. § 8101 *et seq.*

⁴ 20 C.F.R. § 10.607.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5(a) (October 2011).

⁶ *Robert F. Stone*, 57 ECAB 292 (2005); *Leon D. Modrowski*, 55 ECAB 196 (2004); *Darletha Coleman*, 55 ECAB 143 (2003).

⁷ 20 C.F.R. § 10.607(a).

accompanies any subsequent merit decision on the issues.⁸ As appellant's July 16, 2013 request for reconsideration was submitted more than one year after the last merit decision of record, February 19, 2010, it was untimely. Appellant argued that she timely requested reconsideration on December 21, 2010 and submitted a return receipt showing that OWCP received correspondence from her on December 29, 2010. OWCP entered numerous documents from appellant into the record on January 3, 2011; however, there is no request for reconsideration among the evidence submitted. As such, appellant has not established that she timely requested reconsideration and thus must demonstrate clear evidence of error by OWCP in denying her claim for compensation.⁹

On reconsideration appellant discussed a prior work injury and actions taken by the employing establishment in connection with that claim. She maintained that the employer erred in issuing her a last chance warning and sending her out to work without restrictions. The issue, however, is whether appellant has established a medical condition due to the accepted September 21, 2007 work incident. Matters related to a separate claim and administrative actions by the employer are not relevant to the issue at hand, and thus are insufficient to show clear evidence of error.¹⁰

In support of her request for reconsideration, appellant submitted medical evidence already of record, including medical reports dated September 21 and 23 and October 3, 2007 and January 7, 2008. She also resubmitted letters from the employing establishment and notices of suspension dated July 2007. As this evidence duplicated evidence already of record, it is insufficient to establish clear evidence of error absent a showing that OWCP erred in its evaluation of the evidence.¹¹ Appellant alleged that on September 21, 2007 she informed the fire department, the emergency room physicians and Dr. Roberts that she had injured her back, shoulder, leg and neck when she fell hitting the pavement but did not make any specific argument describing how she believed OWCP erred in its evaluation of these reports. Consequently, she has not shown clear evidence of error.

As the evidence submitted by appellant is insufficient to raise a substantial question as to the correctness of OWCP's last merit decision, she has not established clear evidence of error.¹²

On appeal appellant argues that she timely requested reconsideration. As discussed, however, the record shows that while she submitted evidence in December 2010, she did not request reconsideration.

⁸ *Robert F. Stone*, *supra* note 6.

⁹ 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

¹⁰ *See Howard Y. Miyashiro*, 51 ECAB 253 (1999) (to establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP).

¹¹ *See George C. Vernon*, 54 ECAB 319 (2003).

¹² *See Veletta C. Coleman*, 48 ECAB 367 (1997).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration on the grounds that it was not timely and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 28, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board