



## **FACTUAL HISTORY**

This case has previously been before the Board. By decision dated May 27, 1998, the Board affirmed OWCP decisions dated August 5 and March 18, 1996 which found that appellant failed to meet her burden of proof to establish that she sustained an injury in the performance of duty on October 14, 1994.<sup>3</sup> The Board noted that on October 14, 1994 appellant slipped and fell on a flooded floor; however, she did not submit sufficient medical evidence to establish that she sustained an employment injury due to this incident. The Board noted that the record did not contain any statement or medical evidence around the time of the October 14, 1994 fall which indicated that appellant reported an injury during the fall. In a May 29, 2008 order remanding case, the Board found that the record was incomplete and remanded the case for reconstruction and proper assemblage of the record.<sup>4</sup> By decision dated November 8, 2010, the Board affirmed a November 3, 2009 OWCP's decision which found appellant's request for reconsideration was untimely filed and failed to present clear evidence of error.<sup>5</sup> By decision dated June 13, 2012, the Board affirmed a June 22, 2011 decision which found that appellant's request for reconsideration was untimely filed and failed to present clear evidence of error.<sup>6</sup> The facts and circumstances of the case as set forth in the Board's previous determinations are incorporated herein by reference.

In a July 5, 2013 letter, appellant requested reconsideration. She noted the history of her case and stated that she has a valid claim. Appellant asserted that she submitted sufficient evidence to reopen her claim and on the error made. She referenced case law, reiterated arguments previously made in her case and argued the medical evidence of record established her claim. In support of her request, a June 10, 2011 left hip x-ray finding degenerative joint disease was submitted along with June 19, 2012 home care instructions from Health Central for hypertension (high blood pressure) and discharge instructions for hip pain and a June 20, 2012 note indicating that she should return to the clinic for follow up.

By decision dated July 22, 2013, OWCP denied appellant's request for reconsideration as it was not timely filed and failed to demonstrate clear evidence of error.

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<sup>3</sup> Docket No. 97-853 (issued May 27, 1998).

<sup>4</sup> Docket No. 08-491 (issued May 29, 2009), *petition for recon denied.*, (issued December 2, 2008). Appellant appealed from September 11 and November 7, 2007 OWCP decisions that found that her requests for reconsideration were untimely and did not present clear evidence of error.

<sup>5</sup> Docket No. 10-526 (issued November 8, 2010).

<sup>6</sup> Docket No. 12-223 (issued June 13, 2012), *petition for recon denied.*, (issued December 13, 2012).

## LEGAL PRECEDENT

OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of FECA.<sup>7</sup> It will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.<sup>8</sup> In implementing the one-year time limitation, OWCP's procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original OWCP decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues.<sup>9</sup>

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.<sup>10</sup> Its procedures state 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 establishes clear evidence of error on the part of OWCP.<sup>11</sup> In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.<sup>12</sup>

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 which 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 merely to 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 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 raise a substantial question as to the correctness of OWCP's decision. The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP, such that OWCP abused its discretion in denying merit review in the face of such evidence.<sup>13</sup>

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<sup>7</sup> 5 U.S.C. § 8128(a).

<sup>8</sup> 20 C.F.R. § 10.607; *see also D.K.*, 59 ECAB 141 (2007).

<sup>9</sup> *Veletta C. Coleman*, 48 ECAB 367 (1997). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b)(1) (January 2004).

<sup>10</sup> *A.F.*, 59 ECAB 714 (2008).

<sup>11</sup> *E.R.*, Docket No. 09-599 (issued June 3, 2009). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3 (January 2004).

<sup>12</sup> *D.G.*, 59 ECAB 455 (2008).

<sup>13</sup> *Id.* *See James R. Mirra*, 56 ECAB 738 (2005).

## ANALYSIS

The Board finds that OWCP properly determined that appellant failed to file a timely request for reconsideration. OWCP's procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original OWCP decision.<sup>14</sup> However a right to reconsideration within one year also accompanies any subsequent merit decision on the issues.<sup>15</sup> The most recent merit decision was the Board's May 27, 1998 decision. Appellant had one year from the date of that decision to make a timely request for reconsideration. Since she did not file her request until July 5, 2013, it was filed outside the one-year time period.

As her request was untimely, appellant must submit evidence or argument that establishes clear evidence of error in OWCP's decision denying her claim. The term clear evidence of error is intended to represent a difficult standard.<sup>16</sup> Appellant's request would have to establish on its face that OWCP's denial of her claim was erroneous. As noted, the occurrence of the employment incident on October 14, 1994, when she slipped and fell on a flooded floor, has been accepted. The claim was denied because there was insufficient medical evidence to establish that the accepted slip and fall caused and resulted in left hip, back, right knee or other medical conditions. Appellant's statements do not raise a substantial question as to the correctness of OWCP's decision in denying her claim as they do not address the reason that the claim was originally denied, insufficient medical evidence. She asserted that she submitted sufficient evidence to reopen her claim and on the error made. While appellant referenced case law, reiterated arguments previously made in her case and argued the medical evidence of record and established her claim, she has not submitted sufficient supporting evidence that is so positive, precise and explicit that it manifests on its face that OWCP committed an error in denying her request for merit review.<sup>17</sup> Furthermore, her arguments and medical evidence referenced were previously considered by OWCP in prior decisions and, as previously found in prior decisions, failed to address the reason OWCP denied her claim, the lack of causal relation and the need to submit medical evidence based on an accurate history of the injury. Appellant has not submitted sufficient supporting evidence that is so positive, precise and explicit that it manifests on its face that OWCP committed an error in denying her request for merit review.<sup>18</sup>

Appellant did not submit any additional relevant and pertinent new medical evidence or legal arguments not previously considered by OWCP in support of her contentions. The evidence provided by her, a June 10, 2011 left hip x-ray, June 19, 2012 home care instructions for hypertension (high blood pressure), June 19, 2012 discharge instructions for hip pain and a June 20, 2012 return to clinic note, fail to provide any support for causal relationship, the basis upon which her claim was denied and is not sufficient to establish clear evidence of error. The

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<sup>14</sup> *Supra* note 9; *supra* note 12; *Robert F. Stone*, 57 ECAB 292 (2005).

<sup>15</sup> *See F.R.*, Docket No. 09-575 (issued January 4, 2010) (evidence that is not germane to the issue on which the claim was denied is insufficient to demonstrate clear evidence of error).

<sup>16</sup> *D.L.*, Docket No. 08-1057 (issued June 23, 2009); *Joseph R. Santos*, 57 ECAB 554 (2006).

<sup>17</sup> *Robert F. Stone*, *supra* note 14.

<sup>18</sup> *Id.*

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 report, which if submitted prior to OWCP's 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 a case.<sup>19</sup> The Board finds that this evidence is insufficient to shift the weight of the evidence in favor of appellant's claim or raise a substantial question that OWCP erred in denying her claim. Therefore, the Board finds that she has not presented clear evidence of error.

Appellant's arguments on appeal are largely repetitious of her previous statements and request for reconsideration. She focuses on what she believes is missing documentation (both medical and administrative) from the record and numerous errors which she believed the employing establishment and OWCP committed in handling her claim. As previously noted, these arguments miss the point and were considered in prior decisions. Appellant's focus should be on the reason OWCP denied her claim, the lack of causal relation and on the need to submit medical evidence based on an accurate history of the injury. While she submitted a valid claim, she failed to meet her burden of proof in establishing that she suffered a work-related injury on October 14, 1994.

### **CONCLUSION**

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

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<sup>19</sup> *Annie L. Billingsley*, 50 ECAB 210 (1998).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 25, 2014  
Washington, DC

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

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

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