

FACTUAL HISTORY

This case was previously before the Board. In a January 7, 2005 decision,³ the Board found that appellant did not establish that she sustained a new occupational injury or a traumatic injury to her back on or about February 11, 2000 causally related to her work duties. The Board further found that OWCP properly declined to reopen her claim for reconsideration of the merits on May 11, 2004. The facts of the case, as set out in the Board's prior decision, are hereby incorporated by reference.

The relevant facts in this case are as follows: on August 21, 2001 appellant, then a 42-year-old clerk, filed a traumatic injury claim alleging that on February 11, 2000 she hurt her back when she picked up some letters to file which had fallen on the floor. She additionally stated that she sat on a stool which had no back support. Appellant stopped work on February 11, 2000 and did not return. She underwent nonwork-related gynecologic surgery on February 14, 2000 and was disabled from work for a short period of time. Appellant resigned from the employing establishment on May 31, 2000.

Under claim number xxxxxx980⁴ OWCP accepted the conditions of bilateral plantar fasciitis and bilateral heel spurs. Appellant received a schedule award for 19 percent permanent impairment of each leg. She received compensation through September 23, 2004. The record reflects that appellant was working a modified position provided by the employing establishment at the time of her nonwork-related surgery in February 2000 and resignation on May 31, 2000. She retired from the employing establishment on May 31, 2000 and her resignation was not related to her accepted conditions in claim number xxxxxx980. When the schedule award expired, appellant filed a Form CA-7 on June 27, 2006 claiming wage-loss compensation for the period September 24, 2004 through June 27, 2006, which OWCP denied in several decisions.⁵

Following the Board's January 7, 2005 decision, OWCP received a March 1, 2013 letter from appellant requesting reconsideration under the current claim and claim number xxxxxx980. Appellant presented several arguments.⁶ She discussed her claim for plantar fasciitis and heel spurs under claim number xxxxxx980 and presented several arguments with regards to OWCP's decisions under that claim. Appellant addressed the denial of compensation and stated that she was denied "an election of benefits" since September 2004. She alleged that her light-duty job was unsuitable and that no light-duty work was offered her after February 11, 2000. Appellant discussed Dr. Susan Pick's evaluation and the termination of her benefits and her disagreement with an overpayment determination. She argued that her light-duty job never considered her preexisting condition and that she was further injured due to her back, varicose veins, feet, depression, anxiety and stress. Appellant asserted a 38-page letter was mailed on

³ Docket No. 04-1608 (issued January 7, 2005).

⁴ The Board notes that this claim does not adjudicate appellant's claim number xxxxxx980, which pertains to appellant's foot condition. The claim is referenced to provide a full factual history.

⁵ This issue is before the Board under Docket No. 14-233.

⁶ The issue under claim number xxxxxx980 is being adjudicated in Docket No. 14-233.

February 11, 2013.⁷ She contended that OWCP's decisions contained numerous errors and that several physicians of record were not acknowledged or discussed. With regard to her back claim, appellant argued that it should be viewed as an occupational disease rather than a traumatic injury. She stated that she was out of work for only 10 days after her February 11, 2000 gynecological surgery and that Dr. Rosen's statement talked about disability because of a back pain. Appellant asserted that she did not voluntarily resign and that she had additional consequential medical problems. No additional medical evidence accompanied her reconsideration request.

By decision dated March 20, 2013, OWCP denied reconsideration. It found that appellant's request was untimely filed and did not present clear evidence of error.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation:

The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

“(1) end, decrease or increase the compensation awarded; or

“(2) award compensation previously refused or discontinued.”⁸

OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, 20 C.F.R. § 10.607 provides that an application for reconsideration must be sent within one year of the date of OWCP's decision for which review is sought.⁹

The one-year period begins on the date of the original decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board and any merit decision following action by the Board, but does not include preresoupment hearing decisions.¹⁰

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.¹¹

⁷ This letter is not in the current record.

⁸ 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.607(a).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3.b(1) (January 2004).

¹¹ 20 C.F.R. § 10.607(b).

The term clear evidence of error is intended to represent a difficult standard.¹² If clear evidence of error has not been presented, OWCP should deny the application by letter decision, which includes a brief evaluation of the evidence submitted and a finding made that clear evidence of error has not been shown.¹³

ANALYSIS

The most recent decision on the merits in appellant's case was the Board's January 7, 2005 decision finding that she did not sustain a new occupational injury or a traumatic injury to her back on or about February 11, 2000 causally related to her work duties. The Board further found that OWCP properly declined to reopen her case for reconsideration on May 11, 2004. Appellant had one year from January 7, 2005 to file a timely reconsideration request with OWCP. Her March 1, 2013 request is therefore untimely.

Because appellant's March 1, 2013 reconsideration request is untimely, OWCP will not reopen the merits of her claim without her establishing clear evidence of error in its decision to deny her injury claim. Clear evidence of error is a difficult standard. Appellant's request must convincingly show, on its face, that OWCP's decision was wrong.

The Board finds that appellant's request does not establish clear evidence of error. Appellant generally expresses her disagreement with OWCP's prior decisions under claim number xxxxxx980, which is not at issue or relevant to the present claim. With respect to the current claim, she contends that her back claim should have been adjudicated as an occupational disease rather than a traumatic injury as her conditions occurred over a period of years. In the January 7, 2005 decision, the Board found that appellant failed to meet her burden of proof that she sustained either a new occupational injury or a traumatic injury on February 11, 2000 causally related to her work duties. Appellant's argument is repetitious of prior contentions raised. She did not submit any new argument or additional evidence to support that OWCP's decision denying her claim was clearly erroneous. While appellant stated that she submitted a 38-page letter, there is no such letter in the record. Her request did not establish clear evidence of error on the part of OWCP in denying her claim

¹² Federal (FECA) Procedure Manual, *supra* note 10 at Chapter 2.1602.3.c.

¹³ *Id.* at Chapter 2.1602.3.d(1).

CONCLUSION

The Board finds that OWCP properly denied appellant's March 1, 2013 reconsideration request on the grounds that it was untimely filed and failed to establish clear evidence of error.

ORDER

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

Issued: March 26, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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