

ISSUE

The issue is whether OWCP properly determined that appellant's application for reconsideration was untimely and failed to show clear evidence of error.

FACTUAL HISTORY

This is the eleventh appeal in the case. OWCP terminated appellant's compensation on the grounds that she refused an offer of suitable work in an April 17, 1992 decision and denied modification in a March 25, 1993 decision. In a decision dated October 1, 1998, the Board affirmed a January 12, 1996 OWCP decision finding that her reconsideration request was untimely and failed to show clear evidence of error.⁴ By decision dated January 23, 2003, the Board affirmed OWCP decisions dated April 26 and September 7, 2001 and April 11 and July 26, 2002 denying appellant's requests for reconsideration as untimely and failing to establish clear evidence of error.⁵ In the next appeal, the Board affirmed an August 8, 2003 OWCP decision that found that her June 28, 2003 reconsideration request was untimely and failed to show clear evidence of error.⁶ By decision dated November 23, 2004, the Board affirmed decisions dated April 30 and May 17, 2004, finding that appellant's requests for reconsideration were untimely and failed to show clear evidence of error.⁷ In a decision dated December 27, 2007, the Board affirmed OWCP decisions dated May 10 and 29, 2007, finding that her applications for reconsideration were untimely and failed to show clear evidence of error.⁸ By decision dated January 6, 2009, the Board affirmed an April 4, 2008 OWCP decision again finding the request for reconsideration untimely and failing to show clear evidence of error.⁹ In a decision dated February 16, 2010, again the Board found appellant's application for reconsideration was untimely and failed to show clear evidence of error.¹⁰ The next Board decision was dated February 8, 2011, where the Board found that a March 4, 2010 application for reconsideration was untimely and failed to show clear evidence of error.¹¹ By decision dated December 6, 2011, the Board affirmed OWCP decisions dated March 1 and 29, 2011, again finding that the application was untimely and failed to show clear evidence of error.¹² The last Board decision is dated October 12, 2012, and the Board affirmed a March 5, 2012 OWCP decision that held that appellant's reconsideration request was untimely and failed to demonstrate

⁴ Docket No. 92-2518 (issued October 1, 1998).

⁵ Docket No. 02-1814 (issued January 23, 2003).

⁶ Docket No. 03-2128 (issued October 30, 2003).

⁷ Docket No. 04-1429 (issued November 23, 2004).

⁸ Docket No. 07-1697 (issued December 27, 2007).

⁹ Docket No. 08-1420 (issued January 6, 2009).

¹⁰ Docket No. 09-1497 (issued February 16, 2010).

¹¹ Docket No. 10-1335 (issued February 8, 2011).

¹² Docket No. 11-1261 (issued December 6, 2011).

clear evidence of error.¹³ The history of the case is contained in the Board's prior decisions and is incorporated herein in reference.

By letter dated March 14, 2013, appellant requested reconsideration. She reiterated her arguments that the job offer was inadequate as the employing establishment never sent a complete job offer to OWCP, and the March 25, 1993 OWCP decision was erroneous. Appellant again referred to 20 C.F.R. § 10.507 and stated that the employing establishment did not follow OWCP regulations.

By decision dated April 3, 2013, OWCP found that the application for reconsideration was untimely. In addition, it denied merit review of the claim on the grounds that appellant did not show clear evidence of error.

LEGAL PRECEDENT

FECA provides that OWCP may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.¹⁴ The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."¹⁵

According to 5 U.S.C. § 8128(a), a claimant is not entitled to a review of an OWCP decision as a matter of right.¹⁶ This section vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.¹⁷ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a) of FECA.¹⁸ 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. 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 evidence must be positive, precise and explicit and must manifest on its face that OWCP committed an error.¹⁹

To show clear evidence of error, 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

¹³ Docket No. 12-1065 (issued October 12, 2012).

¹⁴ 5 U.S.C. § 8128(a).

¹⁵ 20 C.F.R. § 10.605 (1999).

¹⁶ *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

¹⁷ Under section 8128 of FECA, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application."

¹⁸ 5 U.S.C. §§ 8101-8193.

¹⁹ *D.O.*, Docket No. 08-1057 (issued June 23, 2009); *Robert F. Stone*, 57 ECAB 292 (2005).

and raise a substantial question as to the correctness of OWCP's decision.²⁰ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.²¹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.²² The Board makes an independent determination as to whether a claimant has submitted clear evidence of error on the part of OWCP.²³

ANALYSIS

As the factual history indicates, appellant has filed many applications for reconsideration in this case. The most recent application for reconsideration, dated March 14, 2013, was untimely as it was filed more than one year after the March 25, 1993 merit decision. Therefore, the issue is whether appellant has shown clear evidence of error by OWCP.

Appellant has argued repeatedly that the job offer was inadequate, not properly sent to OWCP and failed to include dates of availability. These arguments have been addressed in prior appeals. In her March 14, 2013 application for reconsideration, appellant again referred to 20 C.F.R. § 10.507. The Board noted in its last decision on appeal that this was not the regulation in effect at the time of the April 17, 1992 and March 25, 1993 merit decisions.²⁴

On appeal, appellant reiterates her argument that OWCP erred in the March 25, 1993 decision. For the reasons stated, the Board finds that she has not established clear evidence of error in this case. Accordingly, OWCP properly denied the March 14, 2013 untimely application for reconsideration without merit review of the claim.

CONCLUSION

The Board finds that appellant's application for reconsideration was untimely and failed to show clear evidence of error.

²⁰ *Annie L. Billingsley*, 50 ECAB 210 (1998).

²¹ *Jimmy L. Day*, 48 ECAB 652 (1997).

²² *Id.*

²³ *Thankamma Mathews*, 44 ECAB 765 (1993).

²⁴ 20 C.F.R. § 10.507 was applicable as of April 1, 1999. The prior regulations with respect to the issue presented was, as the Board noted on the prior appeal, 20 C.F.R. § 10.123.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 3, 2013 is affirmed.

Issued: March 24, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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