

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On September 13, 2012 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a lower back injury that day when she slipped while entering her long life vehicle (LLV). She notified her supervisor and first sought medical treatment that day.

By letter dated September 19, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and asked that she respond within 30 days. She did not respond or submit any evidence.

By decision dated October 26, 2012, OWCP denied appellant's claim. It found that the evidence was insufficient to establish that she sustained an injury because she did not submit any medical evidence providing a firm medical diagnosis in connection with the accepted September 13, 2012 employment incident.

On April 17, 2014 appellant requested reconsideration of OWCP's decision. Accompanying her request was a narrative statement describing the September 13, 2012 employment incident and a history of treatment for her lumbar injury.

In a September 13, 2012 Form CA-16, attending physician's report, Dr. Neal McCollum, an osteopath, reported that appellant sustained a lumbar strain that day when she slipped in the rain and jerked backwards while stepping into her LLV. He checked the box marked "yes" when asked if he believed her condition was caused or aggravated by the employment incident.³

The record also contained reports from Dr. McCollum dated September 13, 2012, April 1 and 15, 2014. On September 13, 2012 Dr. McCollum described the employment incident and diagnosed lumbar strain. On April 1, 2014 he diagnosed lumbar strain, sciatica, lumbar stenosis and intervertebral disc disorder. Dr. McCollum opined that appellant's injury was related to the September 13, 2012 employment incident. He further stated that the repetitive nature of her work was aggravating the situation, causing a worsening of her condition. On April 15, 2014 Dr. McCollum added the diagnoses of bilateral knee pain with chondromalacia patellae, carpal tunnel and tenosynovitis at the hands which he opined were a result of the September 13, 2012 employment incident.

In diagnostic reports dated January 6, 2014, Dr. Sanjay Narotam, a Board-certified diagnostic radiologist, reviewed magnetic resonance imaging (MRI) scan findings pertaining to the left knee and left hand.

³ The Form CA-16 did not contain a signature from the employing establishment authorizing treatment.

In an April 8, 2014 report, Dr. Chadwick Webber, a Board-certified diagnostic radiologist, reported that an MRI scan of the lumbar spine revealed disc bulge at L4-L5 with mild-to-moderate neural foraminal narrowing and minimal degenerative endplate and facet changes.

By decision dated June 20, 2014, OWCP denied appellant's reconsideration request. It found the request untimely filed and failed to establish clear evidence of error.

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.⁴ The Board has found that the imposition of the one-year limitation does not constitute an abuse of the discretionary authority granted OWCP under section 8128(a) of FECA.⁵

OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation, if the claimant's application for review shows 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.⁶

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 and raise a substantial question as to the correctness of OWCP's decision.⁷

Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.⁸ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.⁹ This entails a limited review by OWCP of the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.¹⁰ The Board makes an independent determination as to whether a claimant has submitted clear evidence of error on the part of OWCP.¹¹

⁴ 20 C.F.R. § 10.607(a).

⁵ 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

⁶ 20 C.F.R. § 10.607(b); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

⁷ *Annie L. Billingsley*, 50 ECAB 210 (1998).

⁸ *Jimmy L. Day*, 48 ECAB 652 (1997).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Mathews*, 44 ECAB 765, 770 (1993).

ANALYSIS

In its June 20, 2014 decision, OWCP properly determined that appellant failed to file a timely application for review. An application for reconsideration must be received within one year of the date of OWCP's decision.¹² A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.¹³ As appellant's April 17, 2014 request for reconsideration was submitted and received more than one year after the October 26, 2012 merit decision, it was untimely. Consequently, appellant must demonstrate clear evidence of error by OWCP in denying her claim.¹⁴

The Board finds that appellant has not established clear evidence of error on the part of OWCP. In support of her reconsideration request, appellant submitted reports from Dr. McCollum.

The Board notes that clear evidence of error is intended to represent a difficult standard. Evidence, such as a detailed well-rationalized medical report, which if submitted before the merit denial might require additional development of the claim, is insufficient to establish clear evidence of error.¹⁵

Dr. McCollum reported that appellant's lumbar strain, sciatica, lumbar stenosis, intervertebral disc disorder, bilateral knee pain with chondromalacia patellae, carpal tunnel and tenosynovitis of the hands were caused by the September 13, 2012 employment incident. However, this evidence is insufficient to establish that OWCP erred in its denial of appellant's claim.¹⁶ Dr. McCollum did not explain how the September 13, 2012 employment incident caused appellant's injuries other than generally providing a history of the incident as described by appellant. His report does not establish clear evidence of error on the part of OWCP as it was submitted after OWCP's October 26, 2012 merit decision.¹⁷ Dr. Narotam and Dr. Webber's diagnostic reports are also insufficient to establish clear evidence of error as they provided no opinion on the cause of appellant's injuries. These additional medical reports submitted do not raise a substantial question as to the correctness of OWCP's October 26, 2012 merit decision or demonstrate clear evidence of error.

On appeal, appellant argues that her physician's reports establish a causal relationship between her injuries and the September 13, 2012 employment incident. The Board notes that the underlying issue is medical in nature and the medical evidence submitted was not sufficient to shift the weight of the evidence in appellant's favor to establish that OWCP erred in denying her claim. The evidence submitted does not raise a substantial question concerning the correctness

¹² 20 C.F.R. § 10.607 (2011).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.(e)(6) (August 2011).

¹⁴ See *Debra McDavid*, 57 ECAB 149 (2005).

¹⁵ *Supra* note 13 at Chapter 2.1602.3(c) (March 2011).

¹⁶ See *W.R.*, Docket No. 09-2336 (issued June 22, 2010).

¹⁷ *V.W.*, Docket No. 12-1901 (issued March 5, 2013).

of OWCP's decision. Appellant has failed to establish clear evidence of error on the part of OWCP in denying further merit review.¹⁸

CONCLUSION

The Board finds that appellant's request for reconsideration was untimely filed and did not demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

¹⁸ A.S., Docket No. 11-356 (issued September 16, 2011).