

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 April 15, 2000 appellant, then a 29-year-old postal employee, sustained injury accepted by OWCP for a sprain of neck and contusion of face, scalp and neck except the eyes. Following the injury, appellant returned to limited-duty work until April 2, 2003, when she separated from the postal service.

On October 25, 2012 appellant filed a notice of recurrence claim (Form CA-2a) alleging a return of disability as of September 16, 2002.

By letter dated November 26, 2012, OWCP informed appellant that the evidence of record was insufficient to support her recurrence claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

In support of her claim, appellant submitted medical reports dated January 3 to December 14, 2012 from Dr. Roland Feltner, Board-certified in family medicine. Dr. Feltner reported that diagnostic studies revealed ongoing lumbar disc disease and bone spur formation at the base of the lumbar spine. He further noted advancing arthritic changes from previous work-related injuries. Dr. Feltner stated that he could not give a specific date of exacerbation for the cervical and lumbar spine work injuries as the changes had been gradual and progressive. He diagnosed lumbar spine displacement and cervical arthritis and opined that appellant's conditions were the result of an exacerbation of injuries initially sustained on April 15, 2000.

By decision dated January 9, 2013, OWCP denied appellant's recurrence claim finding that the medical evidence did not establish that she sustained disability as of September 16, 2002 causally related to the accepted April 15, 2000 employment injury. It noted that appellant failed to establish her claim because there was an intervening event on September 16, 2002, the date she claimed a recurrence of disability.³

In an appeal request form dated January 5, 2014, appellant requested reconsideration of the January 9, 2013 OWCP decision. OWCP scanned the appeal as having been received on January 14, 2014. A copy of the United States Postal Service (USPS) priority mail express two-day envelope contained a January 8, 2014 postmark. The envelope's USPS tracking number 9470110200881040180356 established arrival at the London, KY, Post Office on January 10, 2014, available for pickup and delivery on January 13, 2014. Enclosed with her reconsideration

³ The Board notes that on September 16, 2002 appellant alleged that she sustained a neck, back and upper shoulders injury when pulling mail from a truck, claim No. xxxxxx027. On November 6, 2002 OWCP accepted the claim for cervical strain. On September 15, 2010 appellant filed a notice of recurrence in claim No. xxxxxx027. By decision dated August 11, 2011, OWCP denied appellant's recurrence claim. The record before the Board contains no further information regarding this claim, No. xxxxxx027.

packet, appellant submitted narrative statements arguing that her initial injury occurred in 2000 and that she sustained a recurrence of disability on September 16, 2002 while pulling mail off a distribution truck and felt pain in her neck, back and shoulders. Appellant referenced claim No. xxxxxx027 with respect to her September 16, 2002 injury.

By decision dated February 19, 2014, OWCP denied appellant's reconsideration request as untimely filed and failing 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 February 19, 2014 decision, OWCP denied appellant's January 14, 2014 request for reconsideration of the January 9, 2013 decision, finding that it was not timely filed and failed to present clear evidence of error. The Board finds that OWCP properly determined that her request for reconsideration was not timely filed within the one-year time limitation period set forth in 20 C.F.R. § 10.607.

OWCP's procedures were changed effective August 29, 2011.¹² Section 10.607 of the new regulations provide that the date of the reconsideration request for timeliness purposes was changed from the date the request was mailed to the date the request was received by OWCP.¹³ OWCP issued its merit decision denying appellant's claim for recurrence of disability on January 9, 2013. The one-year time limitation for reconsideration began to run on the date of the original decision, and the application for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁴ Therefore, appellant had one year from January 9, 2013 to submit a timely request for reconsideration, which OWCP had to receive by January 9, 2014.

At the time that OWCP's January 9, 2013 decision was issued, OWCP regulations provided that a request shall be received within one year of the date of the OWCP decision for which review is sought. The USPS tracking provided establishes that the reconsideration request did not arrive at the London, KY, Post Office until January 10, 2014, was not deliverable until January 13, 2014, and scanned as received on January 14, 2014.¹⁵ As appellant's reconsideration request was not received by January 9, 2014, one year after the date of the last merit decision of record on January 9, 2014, it was untimely. Consequently, appellant must demonstrate clear evidence of error by OWCP in denying her claim.¹⁶

In the merit denial of the claim, OWCP found that appellant had not established that she sustained a recurrence of disability as of September 16, 2002. In its February 19, 2014 decision, OWCP found that it did not err when it determined that appellant had an intervening injury from another accepted claim for the date she claimed recurrence. The Board notes that appellant's statements submitted with her reconsideration packet relate that she injured her neck, back and shoulders when she was pulling mail off a distribution truck on September 16, 2002 in claim No. xxxxxx027. This evidence addresses an intervening event. Appellant did not submit positive, precise or explicit evidence that manifests on its face that OWCP committed an error in finding that the evidence of record did not establish a spontaneous change in appellant's April 15, 2000

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602(e)(6) (October 2011).

¹³ 20 C.F.R. § 10.607 (2011).

¹⁴ *Supra* note 12.

¹⁵ Moreover, timeliness is determined based on the iFECS "received date." See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b.

¹⁶ See *Debra McDavid*, 57 ECAB 149 (2005).

employment injury on September 16, 2002.¹⁷ Thus, she did not establish clear evidence of error in the denial of a claim for a recurrence of disability.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 February 19, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 2, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

¹⁷ *J.T.*, Docket No. 10-313 (issued February 24, 2010).

¹⁸ *B.B.*, Docket No. 08-232 (issued August 7, 2008).