

FACTUAL HISTORY

The case has been before the Board on two prior appeals. In an order dated May 18, 2010, the Board remanded the case to OWCP for a decision on the merits of the claim.³ The Board found that OWCP had delayed issuance of a decision regarding appellant's reconsideration request that jeopardized her appeal rights. By decision dated June 28, 2010, OWCP denied merit review of the claim. The Board issued an order dated September 28, 2011, remanding the case to OWCP to issue a decision on the merits.⁴

In a decision dated November 10, 2011, OWCP reviewed the merits of the claim and denied modification. It found that appellant had not established any compensable work factors.

According to the Integrated Federal Employee's Compensation System (iFECS) record, on November 15, 2012 OWCP received a request for reconsideration dated October 20, 2012 and additional evidence. The additional evidence included statements by appellant, time sheets, correspondence and medical evidence.

On January 9, 2014 appellant resubmitted the October 20, 2012 reconsideration request.⁵ By decision dated March 12, 2014, OWCP found that the reconsideration request received on January 9, 2014 was untimely. It found that appellant had only provided a statement in her reconsideration request with her opinion that administrative error had occurred, without including 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.⁶ 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."⁷

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.⁸ This section vests OWCP with discretionary authority to

³ Docket No. 09-2022 (issued May 18, 2010). Appellant had filed a CA-2 claim for compensation on December 29, 2005 alleging mental and physical stress from actions of her supervisor. The claim was denied by decision dated June 27, 2006, and an OWCP hearing representative affirmed the denial of the claim by decision dated March 15, 2007.

⁴ Docket No. 11-512 (issued September 28, 2011).

⁵ The request contains a stamp purporting to indicate receipt by OWCP on November 7, 2012, with the number seven handwritten.

⁶ 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.605 (2012).

⁸ *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

determine whether it will review an award for or against compensation.⁹ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a) of FECA.¹⁰ As one such limitation, 20 C.F.R. § 10.607 provides that an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.¹¹ 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.¹²

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.¹³ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.¹⁴ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁵ A determination of whether the claimant has established clear evidence of error entails a limited review of how the evidence submitted with the reconsideration request bears on the evidence previously of record.¹⁶

ANALYSIS

The Board finds that the March 12, 2014 OWCP decision did not properly address the issue and evidence of record. OWCP does not acknowledge that appellant had previously submitted the October 20, 2012 reconsideration request prior to January 9, 2014. The decision only focused on the January 9, 2014 resubmission of the reconsideration request. As to timeliness, the Board notes that the reconsideration request was established as received by iFECS on November 15, 2012. Although receipt in iFECS is considered the date of receipt under OWCP procedures for decisions after August 29, 2011,¹⁷ the Board notes that this document itself contains a stamp that purports to offer an earlier date of receipt on November 7, 2012. Appellant had one year from November 10, 2011 to timely request reconsideration; therefore the

⁹ 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.”

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ 20 C.F.R. § 10.607 (2012).

¹² *D.O.*, Docket No. 08-1057 (issued June 23, 2009); *Robert F. Stone*, 57 ECAB 292 (2005).

¹³ *Annie L. Billingsley*, 50 ECAB 210 (1998).

¹⁴ *Jimmy L. Day*, 48 ECAB 652 (1997).

¹⁵ *Id.*

¹⁶ *K.N.*, Docket No. 13-911 (issued August 21, 2013); *J.S.*, Docket No. 10-385 (issued September 15, 2010).

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (October 2011).

earlier date would render the reconsideration request timely.¹⁸ OWCP made no findings as to whether the stamp on the document represents an OWCP date stamp of receipt or otherwise address the issue of timeliness with respect to the submission of the original reconsideration request. On return of the case record OWCP should make proper findings on the issue of timeliness.

Once a proper determination is made as to timeliness, OWCP should address the evidence that was submitted with the reconsideration request in accord with the appropriate standard of review. The March 12, 2014 decision refers only to the document received on January 9, 2014. Appellant had submitted additional evidence with the initial reconsideration request. Even if the reconsideration request was untimely, OWCP must properly review all the evidence to determine if the clear evidence of error standard has been met in this case. As noted above, the clear evidence of error standard requires a determination of how the evidence submitted with the reconsideration request bears on the evidence previously of record.

A claimant is entitled to a proper decision with findings of fact and a statement of reasons.¹⁹ Since the March 12, 2014 decision fails to make proper findings with respect to the reconsideration request and the evidence submitted, the case will be remanded to OWCP. After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that OWCP did not properly adjudicate the issues and the case is remanded for proper findings with respect to the request for reconsideration.

¹⁸ November 10, 2012 was a Saturday, so appellant had until Monday, November 12, 2012 to timely request reconsideration. *See P.R.*, Docket No. 14-300 (issued May 12, 2014).

¹⁹ 20 C.F.R. § 10.126.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 12, 2014 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: October 20, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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