

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**E.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bridgeview, IL, Employer**

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**Docket No. 14-1370  
Issued: October 1, 2014**

*Appearances:*  
*Claudia M. Howe, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 30, 2014 appellant, through his representative, timely appealed the April 16, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The latest merit decision is dated March 12, 2013, which is more than 180 days prior to the filing of the instant appeal. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board's jurisdiction extends only to the April 16, 2014 nonmerit decision.

**ISSUE**

The issue is whether OWCP properly determined that appellant's request for reconsideration was untimely filed and did not establish clear evidence of error.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193 (2006).

## **FACTUAL HISTORY**

On November 21, 2007 appellant, then a 53-year-old mail carrier, injured his left knee in a work-related fall. OWCP initially accepted the claim for left knee contusion. The claim was later expanded to include left knee unspecified internal derangement. Appellant received wage-loss compensation for temporary total disability (TTD) and OWCP placed him on the periodic compensation rolls effective June 8, 2008. In June 2010, OWCP added left leg reflex sympathetic dystrophy (RSD) as an accepted condition.

On November 9, 2011 OWCP issued a preliminary notice of proposed termination of compensation. By decision dated December 30, 2011, it terminated wage-loss compensation and medical benefits effective that same day. OWCP based its decision on the opinion of Dr. Shing I. Yen, a Board-certified orthopedic surgeon and impartial medical examiner (IME). Dr. Yen examined appellant on May 17, 2010. He provided several reports and, in his most recent supplemental report dated October 13, 2011, Dr. Yen advised that appellant was capable of working full duty. He further commented that if appellant is capable of working full duty, then further treatment would be unnecessary.

Appellant requested reconsideration and, in a decision dated March 12, 2013, OWCP modified the December 30, 2011 decision to reflect appellant's entitlement to ongoing medical treatment. OWCP found Dr. Yen's opinion insufficient to establish that appellant's RSD had resolved. However, Dr. Yen's opinion remained the weight of the evidence regarding injury-related disability. Consequently, OWCP did not reinstate entitlement to wage-loss compensation.

In a letter dated March 10, 2014, appellant questioned how OWCP could reinstate medical benefits for his November 21, 2007 employment injury, but decline to pay wage-loss compensation for total disability due to the same injury. He asked that his letter serve as a request for reconsideration of the March 12, 2013 decision. OWCP received appellant's request for reconsideration on March 13, 2014.

In an April 16, 2014 decision, OWCP denied appellant's request because it was untimely and he failed to establish clear evidence of error with respect to OWCP's March 12, 2013 merit decision.

## **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>2</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>3</sup> One such limitation is that the application for reconsideration must be received by OWCP within one year of the date of the decision for which

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<sup>2</sup> This section provides in pertinent part: "[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." 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.607 (2012).

review is sought.<sup>4</sup> When a request for reconsideration is untimely, OWCP will undertake a limited review to determine whether the application presents clear evidence of error on the part of OWCP in its most recent merit decision.<sup>5</sup>

### ANALYSIS

Appellant's request for reconsideration is dated March 10, 2014, and OWCP received it on March 13, 2014. The last merit decision was issued on March 12, 2013. For the request to have been timely, OWCP should have received it on or before March 12, 2014. On appeal appellant alleges that U.S. Postal Service tracking information reportedly showed that appellant's request was delivered on March 12, 2014, but the referenced tracking information was not part of the record before OWCP, and the Board is precluded from reviewing it.<sup>6</sup> Moreover, timeliness is determined based on the iFECS "received date," which in this case was March 13, 2014.<sup>7</sup> Because appellant's request for reconsideration was untimely, he must demonstrate clear evidence of error on the part of OWCP.<sup>8</sup>

OWCP previously terminated wage-loss compensation and medical benefits effective December 30, 2011. Medical benefits were reinstated based on OWCP's determination that appellant's RSD had not fully resolved. On reconsideration, appellant questioned how OWCP could reinstate medical benefits, but continue to deny wage-loss compensation.

A recognized need for ongoing medical treatment is not a finding that the claimant cannot work. Appellant's latest reconsideration request did not include additional medical evidence that showed of ongoing injury-related disability. Accordingly, he failed to establish clear evidence of error on the part of OWCP. As such, there is no justification for further merit review. The Board finds that OWCP properly declined to reopen appellant's case under 5 U.S.C. § 8128(a).

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<sup>4</sup> 20 C.F.R. § 10.607(a). The one-year period begins on the date of the original decision, and an application for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought for merit decisions issued on or after August 29, 2011. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>5</sup> 20 C.F.R. § 10.607(b).

<sup>6</sup> 20 C.F.R. § 501.2(c)(1).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b.

<sup>8</sup> 20 C.F.R. § 10.607(b). To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by OWCP. *See Dean D. Beets*, 43 ECAB 1153 (1992). The evidence must be positive, precise and explicit and it must be apparent on its face that OWCP committed an error. *See Leona N. Travis*, 43 ECAB 227 (1991). It is not enough to merely show that the evidence could be construed to produce a contrary conclusion. *Id.* Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error. *See Jesus D. Sanchez*, 41 ECAB 964 (1990). The evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must be of sufficient probative value to *prima facie* shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision. *Thankamma Mathews*, 44 ECAB 765, 770 (1993).

**CONCLUSION**

Appellant's request for reconsideration was untimely, and he failed to demonstrate clear evidence of error. Therefore, he is not entitled to further merit review.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 1, 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