



## **FACTUAL HISTORY**

On October 29, 2012 appellant, then a 48-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 23, 2012 he sustained a back injury while lifting a heavy parcel in the performance of duty. The reverse of the claim form indicated that he returned to work on October 24, 2012. In a report dated December 28, 2012, Dr. Luis Rivera, a surgeon, stated that at the time of the October 23, 2012 incident appellant felt pain in his low back. According to Dr. Rivera, a few days later, appellant noticed swelling to the right groin, and progressively experienced more pain and swelling to the right groin. He indicated that appellant did not have a prior history of a hernia, and the lumbosacral sprain and hernia could be explained from the October 23, 2012 injury.

OWCP accepted the claim on January 29, 2013 for lumbar and right groin strain. Appellant filed claims for compensation (Form CA-7) commencing February 9, 2013.

In a report dated February 11, 2013, Dr. Rivera stated that appellant was three weeks post hernia surgery. He stated that appellant continued to have low back complaints and x-rays showed L5-S1 narrowing. Dr. Rivera indicated that appellant could work modified duties and completed an OWCP-5c work restriction form that included a 10-pound lifting restriction.

By letter dated April 15, 2013, OWCP indicated that appellant would receive wage-loss compensation as of February 9, 2013. In a letter dated April 16, 2013, it advised him to disregard the prior letter. Appellant was advised to submit additional medical evidence to establish an employment-related period of disability.

In a report dated April 29, 2013, Dr. Rivera noted that appellant had suffered a work injury on October 23, 2012. He reported that the initial diagnosis was lumbar and right groin strain, but the right groin did not improve and appellant was diagnosed with a right inguinal hernia. According to Dr. Rivera, appellant went to his private physician and surgery was performed. Dr. Rivera opined that appellant could now return to regular duty.

By decision dated May 24, 2013, OWCP denied the claim for wage-loss compensation commencing February 9, 2013. It found the medical evidence insufficient to establish an employment-related disability during the period claimed.

In a letter dated May 4, 2014, but received by OWCP on May 28, 2014, appellant requested reconsideration of his claim. He discussed the development of his claim and the evidence submitted. Appellant stated that his hernia was related to the October 23, 2012 injury and that he asserts his claim for wage-loss compensation should have been accepted. He questioned whether there was any missing medical documentation, and stated that his address was misspelled.<sup>3</sup> Appellant concluded that the claim had caused stress and financial difficulties.

By decision dated August 26, 2014, OWCP denied appellant's application for reconsideration as it was untimely and failed to show clear evidence of error.

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<sup>3</sup> Appellant's physician, Dr. Rivera, appeared to have misspelled appellant's home address in his reports. The decisions and documents from OWCP provide an accurate address of record.

## 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.<sup>4</sup> 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.”<sup>5</sup>

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.<sup>6</sup> This section vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.<sup>7</sup> OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a) of FECA.<sup>8</sup> 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.<sup>9</sup> According to OWCP procedures, the received date is determined by the document received date in the Integrated Federal Employees’ Compensation System (IFECS).<sup>10</sup>

OWCP will consider an untimely application only if the application demonstrates clear evidence of error on the part of its most recent merit decision. The evidence must be positive, precise, explicit, and must manifest on its face that OWCP committed an error.<sup>11</sup>

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 sufficiently 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.<sup>12</sup> Evidence that does not raise a substantial question concerning the correctness of OWCP’s decision is insufficient to establish clear evidence of error.<sup>13</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>14</sup> A determination of whether the claimant has

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<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.605 (2012).

<sup>6</sup> *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>7</sup> 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.”

<sup>8</sup> 5 U.S.C. §§ 8101-8193.

<sup>9</sup> 20 C.F.R. § 10.607 (2012).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011). This section provides that for decisions prior to August 29, 2011, the application for reconsideration must be mailed within one year.

<sup>11</sup> *D.O.*, Docket No. 08-1057 (issued June 23, 2009); *Robert F. Stone*, 57 ECAB 292 (2005).

<sup>12</sup> *Annie L. Billingsley*, 50 ECAB 210 (1998).

<sup>13</sup> *Jimmy L. Day*, 48 ECAB 652 (1997).

<sup>14</sup> *Id.*

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.<sup>15</sup>

### ANALYSIS

In the present case, OWCP's last merit decision for wage-loss compensation was dated May 24, 2013. Appellant had one year from that date to timely submit an application for reconsideration. As noted above, the date of filing is the date it is received by OWCP. In this case May 24, 2014 fell on a Saturday. If the last day of the one-year time period falls on a Saturday, Sunday, or a legal holiday, the claimant has until the next business day to timely request reconsideration.<sup>16</sup> As Monday, May 26, 2014 was a legal holiday, the one-year period was extended until Tuesday, May 27, 2014. According to the record, the application for reconsideration was received by OWCP and entered into the IF ECS system on May 28, 2014. It was, therefore, an untimely application for reconsideration.

As an untimely application for reconsideration, appellant must show clear evidence of error by OWCP with respect to the denial of his wage-loss compensation claim. Appellant reviewed his claim and the evidence submitted and stated that he felt his hernia was employment related. He noted that he had received a letter stating that he was going to receive compensation and then the next day his compensation was taken away. Appellant stated that he had undergone stress and financial difficulties as a result of the actions on his claim for compensation.

As noted above, even if the evidence could be construed to produce a result contrary to the conclusion drawn by OWCP, it is not enough to establish clear evidence of error. There must be evidence of such probative value that it is sufficient 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. Appellant did not meet that standard in this case. OWCP denied the claim for wage-loss compensation commencing February 9, 2013 on the grounds that the medical evidence was insufficient to establish the period of disability claimed. Appellant has expressed his disagreement with OWCP's finding, but has not established clear evidence of error. As to a mailing address, the decisions and OWCP documents of record contain appellant's address of record. There was no evidence of error with respect to the issuance of an OWCP decision.

The Board accordingly finds that appellant's application for reconsideration was untimely and failed to show clear evidence of error. OWCP properly denied the application for reconsideration in this case.

On appeal, appellant submitted a statement reiterating his arguments in the application for reconsideration submitted to OWCP. He also submitted additional evidence. The Board cannot consider any evidence that was not before OWCP at the time of the decision on appeal.<sup>17</sup>

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

<sup>16</sup> See *Debra McDavid*, 57 ECAB 149 (2005); see also *M.A.*, Docket No. 13-1783 (issued January 2, 2014).

<sup>17</sup> 20 C.F.R. § 501.2(c)(1).

The Board considered the evidence of record as of August 26, 2014. For the reasons noted above, OWCP properly denied appellant's application for reconsideration.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 26, 2014 is affirmed.

Issued: April 22, 2015  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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