

FACTUAL HISTORY

On November 16, 2013 appellant, then a 45-year-old city carrier, filed a traumatic injury claim alleging that on November 9, 2013 she suffered a traumatic emotional condition after witnessing someone being shot while on her route. In a supporting statement, she explained that as she was reviewing mail in the back of her truck a man with a head wound came around the corner and informed her that someone was shooting at him and he asked her to call 911. Appellant explained that she called 911, that the police arrived within four minutes, and that she gave a statement to the police as to what she had seen. She submitted witness statements. The employing establishment controverted the claim, alleging that appellant did not qualify for continuation of pay because she only assisted the man and did not witness the actual shooting.

In a November 18, 2013 note, Robert Jackson, a physician assistant, found appellant incapacitated from work from November 18 to December 2, 2013.

In a decision dated January 9, 2014, OWCP denied appellant's claim. It determined that although the evidence established that the incident occurred as described, her claim was denied because she failed to submit any medical evidence establishing a diagnosed medical condition causally related to the accepted incident.

On January 23, 2014 appellant submitted a report from the physician assistant, Mr. Jackson, in which he noted that she had been seen for PTSD following the shooting incident while delivering mail on her assigned route. Mr. Jackson noted that since that episode, even thinking about that neighborhood caused her to develop fearfulness, palpitations, sweats, and anxiety. He advised that appellant had been prescribed strong medication to take when she had a panic attack, but that these medications could affect her judgment and ability to drive safely. Mr. Jackson noted that she had been working with her counselor to help her cope with her mood disorder and PTSD, but that she remained fearful and anxious to the point of incapacitation. He recommended that appellant's mail route be altered as she had no problems in other areas of her route.

In a January 23, 2014 medical report, Dr. R. Anthony Moore, a Board-certified psychiatrist, noted that appellant was delivering mail in a high crime area when she heard shots fired and saw a man run at her who had been shot in the head. He noted that she subsequently called 911. Appellant described having panic attacks because of flashbacks and recurrent dreams since that incident. Dr. Moore diagnosed PTSD secondary to the shooting of November 9, 2013. He explained that appellant experienced an event that involved death or serious injury or threat of physical integrity to herself or others and that this met the criteria for PTSD. Dr. Moore noted that she experienced increased psychological distress in a form of anxiety and panic episodes at the thought that the event could happen again. He noted detachment and estrangement from others and periods of hypervigilant and startled reactions.

On February 25, 2014 appellant requested review of the written record by an OWCP hearing representative. By decision dated March 27, 2014, OWCP denied her request as it was untimely filed and further noted that the case could be equally well addressed by requesting reconsideration.

Following the March 27, 2014 decision, appellant submitted March 2014 communication from the employing establishment noting that she no longer delivered mail in the area where the November 9, 2013 incident occurred and was given a new bid job where she was driving less than three hours a day in a totally different area. Dr. Moore was asked whether she could return to work. He has found appellant still unable to work due to worsening of her mental state.² In a December 12, 2014 note, Dr. Moore continued work restrictions for her due to her condition of PTSD and noted that she continued to experience marked anxiety and panic when it was close to nightfall.

In a June 30, 2014 report, Dr. Moore noted that appellant's symptoms of PTSD were caused by acts of violence which she saw, heard, and felt on the job. He opined, within a reasonable degree of medical certainty, that as a direct result of her injury which occurred in the performance of duty she sustained PTSD.

On March 25, 2015 appellant requested that OWCP reconsider her claim. She also filed an appeal with the Board on March 27, 2015.³

By decision dated June 23, 2015, OWCP denied her request for reconsideration because it was untimely filed and found that the evidence submitted failed to establish clear evidence of error.

LEGAL PRECEDENT

To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received 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 The one-year period begins on the date of the original decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board, and any merit decision following action by the Board.⁶

OWCP, however, may not deny an application for review solely because the application was untimely filed. When an application for review is untimely filed, it must nevertheless undertake a limited review to determine whether the application establishes clear evidence of

² Dr. Moore repeatedly used the year 2015 in this note. However, as the note was received by OWCP on March 18, 2014, the Board concludes that it was a typographical error and that the year was actually intended to be 2014.

³ On April 27, 2015 the Board dismissed appellant's appeal, finding that it was untimely filed. Docket No. 15-965 (issued April 27, 2015).

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 *D.G.*, 59 ECAB 455 (2008); *see also C.J.*, Docket No. 12-1570 (issued January 16, 2013).

error.⁷ OWCP regulations and procedures provide that it will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's application for review shows clear evidence of error on the part of OWCP.⁸

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.⁹ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.¹⁰ Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.¹¹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹² This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.¹³ To show clear evidence of error, 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.¹⁴

ANALYSIS

The Board finds that OWCP properly determined that appellant failed to file a timely application for reconsideration. As noted, an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.¹⁵ As appellant's request for reconsideration was not received by OWCP until March 25, 2015, more than one year after issuance of the last merit decision on January 9, 2014, it was untimely.¹⁶ Consequently, she must demonstrate clear evidence of error in OWCP's January 9, 2014 decision denying her claim.

⁷ See 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁸ 20 C.F.R. § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5a (October 2011). OWCP procedures further provide that the term clear evidence of error is intended to represent a difficult standard. The claimant must present evidence which on its face shows that OWCP made an error (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error. See Chapter 2.1602.3c.

⁹ See *Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

¹⁰ See *Leona N. Travis*, 43 ECAB 227, 240 (1991).

¹¹ See *Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

¹² See *supra* note 10.

¹³ See *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

¹⁴ *Leon D. Faidley, Jr.*, *supra* note 5.

¹⁵ 20 C.F.R. § 10.607(a).

¹⁶ *B.W.*, Docket No. 15-0892 (issued August 26, 2015).

OWCP accepted the November 9, 2013 incident. It had denied appellant's claim, however, because she had failed to establish that she sustained a diagnosed medical condition causally related to the accepted employment incident. With her untimely request for reconsideration appellant submitted additional medical evidence. The Board must make an independent determination as to whether the evidence submitted established clear evidence of error in OWCP's decision denying her claim.¹⁷

In support of appellant's reconsideration request OWCP received a January 3, 2014 letter from Mr. Jackson, a physician assistant. As the underlying issue is medical in nature, Mr. Jackson's reports are of no probative value.¹⁸

OWCP also received several reports from Dr. Moore dating from January 23 to June 30, 2014. While Dr. Moore opined that appellant had PTSD caused by the employment incident the Board has explained that even a detailed well-rationalized medical report which if submitted before the denial was issued would have created a conflict in medical opinion requiring further development, is still not sufficient to establish clear evidence of error.¹⁹ The record evidence must be sufficient to shift the weight of the evidence in favor of appellant. The January 23 through June 30, 2014 reports from Dr. Moore do not manifest on their face that OWCP committed an error in denying appellant's traumatic injury claim and thus are insufficient to establish clear evidence of error.

CONCLUSION

OWCP properly determined that appellant's request for reconsideration was untimely filed pursuant to 20 C.F.R. § 10.607(a) and failed to establish clear evidence of error.

¹⁷ See *D.G.*, Docket No. 08-137 (April 14, 2008).

¹⁸ See *George H. Clark*, 56 ECAB 162 (2004); a physician assistant is not a physician as defined by FECA at 5 U.S.C. § 8101(2) and any report from such individual does not constitute competent medical evidence.

¹⁹ *D.G.*, 59 ECAB 455 (2008).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 23, 2015 is affirmed.

Issued: December 7, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board