



## **FACTUAL HISTORY**

On June 14, 1990 appellant, then a 32-year-old clerk typist, filed an occupational disease claim (Form CA-2) alleging that on February 28, 1990, she realized that she sustained an anxiety disorder as a result of factors of her federal employment.

By decision dated August 15, 1990, OWCP denied appellant's claim for compensation. It noted that appellant had claimed that her condition had been caused by harassment from her supervisor as a result of a proposed removal action. The proposed removal action was initiated by the employing establishment, was based on excessive use of leave, which was changed to a 60-day suspension on appeal. OWCP found that personnel matters are not compensable factors of employment in regard to the acceptance of a claim for benefits.

By letter dated October 20, 2014, appellant requested reconsideration of her claim. She stated that the hostile work environment of the employing establishment contributed to her illness and that the damage done was irreparable. Appellant noted that she should have returned to work after a 60-day suspension, and that after 2 months, they "lured [her] back with deception by stating that [she] would be returning to [her] same position," but that the position was not actually the same one. With her reconsideration request, she submitted several forms and documents relating to the proposed removal action initiated by the employing establishment.

By decision dated January 23, 2015, OWCP declined appellant's request for reconsideration. It found that her request was not timely filed and failed to present clear evidence of error.

## **LEGAL PRECEDENT**

To be entitled to a merit review of an OWCP decision denying or terminating a benefit, an application for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought.<sup>2</sup> 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.<sup>3</sup>

OWCP 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 error.<sup>4</sup>

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<sup>2</sup> 20 C.F.R. § 10.607(a).

<sup>3</sup> 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

<sup>4</sup> *See* 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

OWCP regulations and procedures provide that OWCP 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.<sup>5</sup>

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>6</sup> The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.<sup>7</sup> Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.<sup>8</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>9</sup> 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.<sup>10</sup>

The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP such that it abused its discretion in denying merit review in the face of such evidence.<sup>11</sup> In order to establish 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 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>

### ANALYSIS

In its January 23, 2015 decision, OWCP determined that appellant failed to file a timely application for review. The one-year time period for requesting reconsideration of an OWCP decision begins on the date of that original decision.<sup>13</sup> Appellant's request for reconsideration was filed on October 20, 2014, over 24 years after OWCP's August 15, 1990 decision. Therefore, she must show clear evidence of error on the part of OWCP in issuing this decision.

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<sup>5</sup> *Id.* at § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5(a) (October 2011). OWCP's procedure manual further provides, "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 a mistake. For example, a claimant provides proof that a schedule award was miscalculated, such as a marriage certificate showing that the claimant had a dependent but the award was not paid at the augmented rate."

<sup>6</sup> See *Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

<sup>7</sup> 20 C.F.R. § 10.607(b); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

<sup>8</sup> See *Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

<sup>9</sup> See *Leona N. Travis*, *supra* note 7.

<sup>10</sup> See *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

<sup>11</sup> See *Pete F. Dorso*, 52 ECAB 424, 427 (2001); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

<sup>12</sup> See *Velvetta C. Coleman*, 48 ECAB 367, 370 (1997).

<sup>13</sup> 20 C.F.R. § 10.607(a).

Appellant has not demonstrated clear evidence of error on the part of OWCP in issuing its August 15, 1990 decision. She did not submit the required positive, precise, and explicit evidence which shows on its face that OWCP committed an error.

Appellant's request for reconsideration, submitted along with documents related to her proposed removal action from the employing establishment that was later modified into a 60-day suspension, merely restated the arguments of her original claim and gave a history of her condition. The basis for the rejection of her original claim was that the claimed factors of employment did not occur in the performance of her duty.

The evidence submitted on reconsideration deals with an administrative action dealing with a personnel matter related to excessive use of leave. This evidence does not establish clear error. Appellant also alleged harassment, but provided only records of the administrative action related to her dispute with the employing establishment. These documents, in themselves, are not the type of probative and reliable evidence 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 August 15, 1990 decision.

For these reasons, the evidence submitted by appellant does not raise a substantial question concerning the correctness of OWCP's August 15, 1990 decision, and OWCP properly determined that appellant did not demonstrate clear evidence of error in that decision.

#### **CONCLUSION**

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of her claim as her request was untimely filed and failed to demonstrate clear evidence of error.

**ORDER**

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

Issued: June 17, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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