



## **FACTUAL HISTORY**

On December 6, 2012 appellant, then a 51-year-old customer service representative (CSR), filed a traumatic injury claim (Form CA-1) alleging that on November 16, 2012 she attempted to sit down on her chair, stepped on the chair wheel and slipped, hitting her left hand/wrist on the edge of the desk. She alleged that her left hand/wrist was fractured. The employing establishment contended that appellant informed a supervisor on November 20, 2012 of a scheduled doctor's appointment on November 26, 2012, but did not mention a November 16, 2012 injury. Appropriate development followed.

By decision dated January 29, 2013, OWCP denied the claim finding that fact of injury was not established. It explained that the factual component was not satisfied.

On March 14, 2013 OWCP received appellant's request for reconsideration along with medical evidence. It received a number of medical reports from Dr. Robert M. Mochizuki, a Board-certified orthopedic surgeon, dated November 26, 2012. In the November 26, 2012 report, Dr. Mochizuki related that appellant had been involved in a motor vehicle accident on July 3, 2012, at that time her left wrist was caught in a door handle and she developed ecchymosis and swelling around the dorsum of the left wrist and thumb, with complaints of persistent pain and aching of the thumb and dorsum of her wrist as well as diminished sensation of the tips of the digits. In an amendment to this report, he related that she had called and stated that she had forgotten that she had injured her left wrist at work on November 16, 2012 when she fell and hit her left wrist on a desk. After reviewing x-rays of appellant's left wrist Dr. Mochizuki diagnosed possible intra-articular fracture of the left distal radius, possible intra-articular tear of the scapholunate ligament, possible carpal tunnel syndrome of the left upper extremity, and possible de Quervain's tenosynovitis. In an attending physician's report dated January 14, 2013, he indicated by check mark that appellant had injured her left wrist at work on November 16, 2013.

By decision dated June 12, 2013, OWCP affirmed the denial of the claim. It modified the prior decision to reflect fact of injury was established, but denied the claim on the basis causal relationship was not established. OWCP noted the evidence established that appellant had injured her left wrist in a July 3, 2012 motor vehicle accident and it was unknown if the current left wrist condition was due to the motor vehicle accident or whether it was related to the November 16, 2012 employment incident.

On July 15, 2013 OWCP received appellant's July 11, 2013 request for reconsideration. Appellant resubmitted Dr. Mochizuki's January 14, 2013 form report. By decision dated October 3, 2013, OWCP denied the request for reconsideration as the evidence was insufficient to warrant a merit review.

On August 26, 2014 OWCP received appellant's August 1, 2013 request for reconsideration. In an undated letter, also received August 26, 2014, appellant advised that she was submitting additional medical evidence which supported her claim.

OWCP received a duplicate copy of a January 14, 2013 attending physician's report (Form CA-20) from appellant's physician, which was reviewed in the previous decision, and a

Form CA-2 (occupational disease claim) dated July 15, 2013. In the July 15, 2013 claim form, appellant explained that she had a preexisting right hand injury due to a March 25, 2010 injury. She also alleged that she continued working and injured her left wrist at work on November 16, 2012. Appellant's supervisor noted on this claim form that appellant had stopped work on January 25, 2013.

In an August 1, 2013 report, Dr. Kathleen Baron, a Board-certified family practitioner, noted that appellant had indicated that on November 16, 2012 she fractured her left wrist after she slipped at work. She indicated that she was not the primary treating physician for that claim. Dr. Baron indicated that appellant originally injured her right hand March 25, 2010, which was an accepted claim for which she was the primary treating physician. She presented findings on examination and diagnosed right wrist strain and right shoulder strain, for which she opined that appellant, was totally disabled.

By decision dated November 24, 2014, OWCP denied her reconsideration request because it was untimely filed and did not present clear evidence of error.

### **LEGAL PRECEDENT**

OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of FECA. It will not review a decision denying or terminating a benefit unless the application for review is received within one year of the date of that decision.<sup>2</sup> OWCP's regulations state that it will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth section 10.607 of OWCP regulations, if the claimant's application for review shows clear evidence of error on the part of OWCP.<sup>3</sup> In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.<sup>4</sup>

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP. The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error. It is not enough to merely show that the evidence could be construed so as to produce a contrary conclusion. 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. To show clear evidence of error, the evidence submitted 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.<sup>5</sup>

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<sup>2</sup> 20 C.F.R. § 10.607(a).

<sup>3</sup> *Id.* at § 10.607(b); *Cresenciano Martinez*, 51 ECAB 322 (2000).

<sup>4</sup> *See Alberta Dukes*, 56 ECAB 247 (2005).

<sup>5</sup> *Robert G. Burns*, 57 ECAB 657 (2006).

OWCP procedures note 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.<sup>6</sup> The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP.<sup>7</sup>

### ANALYSIS

The Board finds that OWCP properly determined that appellant failed to file a timely request for reconsideration. The most recent OWCP merit decision in this case was issued on June 12, 2013. Appellant's request for reconsideration was received on August 26, 2014, more than one year after the June 12, 2013 merit decision. Therefore, it was untimely filed. Consequently, appellant must establish clear evidence of error by OWCP in denying her request for a merit review of her claim.

The Board finds that appellant has not established clear evidence of error in OWCP's June 12, 2013 decision. OWCP denied appellant's claim because she had not established causal relationship between her left wrist condition and the November 16, 2012 employment incident. Appellant requested reconsideration on the belief that the medical evidence established such causal relationship. The issue of causal relationship is a medical issue, one that must be addressed by rationalized medical opinion evidence.<sup>8</sup> Appellant's belief is irrelevant.

With respect to the medial evidence submitted with the application for reconsideration, appellant has not established clear evidence of error by OWCP. The copy of the January 14, 2013 attending physician's report (Form CA-20) was reviewed in the previous decision and found insufficient to establish causal relationship. The Form CA-2 dated July 16, 2013 along with Dr. Baron's August 1, 2013 report pertain to a different injury or claim are insufficient on its face to establish clear evidence of error in the denial of her alleged November 16, 2012 left wrist injury.

The evidence and arguments submitted on reconsideration do not raise a substantial question as to the correctness of OWCP's decision in its denial of appellant's claim. Consequently, OWCP properly found that the untimely reconsideration request did not establish clear evidence of error.

On appeal, counsel argues that OWCP's decision is contrary to fact and law. However, for the reasons set forth above, appellant did not meet her burden of proof to establish that her untimely reconsideration request presented clear evidence of error in OWCP's June 12, 2013 merit decision. The Board affirms OWCP's November 24, 2014 decision.

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<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5(a) (October 2011); *James R. Mirra*, 56 ECAB 738 (2005).

<sup>7</sup> *Nancy Marcano*, 50 ECAB 110 (1998).

<sup>8</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration as untimely filed and lacking clear evidence of error.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2015  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board