

disabled/unbalanced cart. She submitted an x-ray report, a work excuse note, and a return to work note with her claim.

Following development of the claim, OWCP, by decision dated July 8, 2011, denied the claim as the medical component of fact of injury had not been established as there was no medical evidence which contained a medical diagnosis in connection with the April 23, 2011 employment incident.

Appellant disagreed with OWCP's decision and requested an oral hearing before a hearing representative of OWCP's Branch of Hearings and Review, which was held October 24, 2011. By decision dated December 8, 2011, OWCP hearing representative affirmed the July 8, 2011 decision finding that the medical evidence failed to establish causal relationship between the diagnosed condition and the April 23, 2011 employment incident.

On January 4, 2012 OWCP received appellant's request for reconsideration of its decision. By decision dated March 23, 2012, it denied modification of its prior decision. OWCP found the December 21, 2011 report from Dr. Nicholas Post, a Board-certified neurological surgeon, speculative or equivocal in character and lacking in medical rationale.

On June 18, 2012 OWCP received appellant's request for reconsideration of OWCP's decision. By decision dated October 16, 2012, it denied modification of the March 23, 2012 decision. OWCP found the December 29, 2011 medical report of Dr. Sanjeev Agarwal, Board-certified in physical medicine and rehabilitation, insufficient to support that the diagnosed medical conditions were causally related to specific work incidents.

On December 26, 2012 OWCP received appellant's request for reconsideration of its October 16, 2012 decision. By decision dated March 5, 2013, it denied modification of its October 16, 2012 decision. OWCP found the November 28, 2012 report of Dr. Post insufficient to establish causal relationship.

On August 20, 2013 OWCP received appellant's request for reconsideration of its March 5, 2013 decision. By decision dated November 14, 2013, it denied modification of its prior decision. OWCP found the additional medical reports from Dr. Patel, Dr. Post, and Dr. Agarwal insufficient to establish causal relation.²

On November 17, 2014 OWCP received appellant's November 13, 2014 request for reconsideration, postmarked November 13, 2014. Evidence received by OWCP on December 1, 2014 included an October 15, 2014 magnetic resonance imaging (MRI) scan of the lumbar spine, a November 19, 2014 chart note from Dr. Post, and a duplicate copy of the November 13, 2014 request for reconsideration.

² This included a review of new reports and reports previously of record and encompassed reports from Dr. Patel dated April 26, May 10 and 27, June 10, July 15, and October 21, 2011; reports from Dr. Post dated October 12 and December 21, 2011, November 28, 2012, and July 26, 2013; and reports from Dr. Agarwal dated December 29, 2011.

In his November 19, 2014 report, Dr. Post indicated that appellant had an injury to her lumbar spine that appeared to be a result of moving heavy carts while performing employment duties at the employing establishment on April 23, 2011. He noted that a July 14, 2011 MRI scan showed evidence of degenerative lumbar discs. Prior to her accident, appellant had no history of low back pain or degenerative changes in her lumbar spine. Dr. Post concluded that it was medically reasonable that her low back pain was a result of the April 23, 2011 injury.

By decision dated February 24, 2015, OWCP denied appellant's reconsideration request finding that 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.³ 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, but does not include preresoupment hearing decisions.⁴

Its regulations state that OWCP will reopen a claimant's case for merit review, notwithstanding the one year filing limitation set forth in section 10.607 of OWCP regulations, if the claimant's application for review shows clear evidence of error on the part of OWCP.⁵ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.⁶

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.⁷

³ 20 C.F.R. § 10.607(a) (2011).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(a) (October 2011).

⁵ 20 C.F.R. § 10.607(b) (2011); *Cresenciano Martinez*, 51 ECAB 322 (2000).

⁶ *See Alberta Dukes*, 56 ECAB 247 (2005).

⁷ *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.⁸ The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP.⁹

ANALYSIS

OWCP issued its most recent merit decision on November 14, 2013 which denied appellant's claim for a traumatic injury of April 23, 2011. The February 24, 2015 nonmerit decision found that her request for reconsideration dated November 13, 2014 was untimely as it was received December 1, 2014. However, the Board notes that the request for reconsideration received December 1, 2014 was a duplicate copy of the original reconsideration request which was received November 17, 2014.

Appellant's request for reconsideration was received November 17, 2014, this was however more than a year after the November 14, 2013 merit decision. The Board notes that while the November 13, 2014 reconsideration request was postmarked November 13, 2014, the date of the request or the date of the mark is immaterial. The regulation makes clear that the period of limitation is satisfied only by receipt.¹⁰ As OWCP received appellant's November 13, 2014 reconsideration request on November 17, 2014, more than one year from the November 14, 2013 merit decision, her reconsideration request was not timely filed.

The Board finds that appellant has not established clear evidence of error in OWCP's November 14, 2013 decision. Appellant's claim was denied because she had not established a causal relationship between her diagnosed conditions and the April 23, 2011 employment incident. The issue of causal relationship is a medical issue, one that must be addressed by rationalized medical opinion evidence.¹¹

In support of her request for reconsideration, appellant submitted a November 19, 2014 report from Dr. Post and a lumbar spine MRI scan report. However, this medical evidence does not establish clear evidence of error by OWCP. In his November 19, 2014 report, Dr. Post noted evidence of degenerative discs on appellant's July 11, 2011 lumbar spine MRI scan and that prior to her accident she had no history of low back pain or degenerative changes in her lumbar spine. He concluded that it was medically reasonable that her low back pain was a result of the

⁸ *Supra* note 4; *James R. Mirra*, 56 ECAB 738 (2005).

⁹ *Nancy Marcano*, 50 ECAB 110 (1998).

¹⁰ *B.B.*, Docket No. 14-464 (issued June 4, 2014).

¹¹ *Mary J. Briggs*, 37 ECAB 578 (1986).

April 23, 2011 injury. This opinion does not establish clear evidence of error.¹² The Board notes 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 a mistake.¹³ The submission of a detailed and 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.¹⁴

Additionally, the lumbar spine MRI scan report does not raise any substantial questions as to the correctness of the November 14, 2013 merit decision as it does not address the issue of causal relationship for the claimed April 23, 2011 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, appellant asserts that she sent in her reconsideration request in a timely manner and was informed by OWCP that she could send in medical notes within five days. She also argued that the evidence of record supported the location, cause, and diagnosis of her April 23, 2011 work injury. As noted, the evidence demonstrates that appellant's reconsideration request was received after the one-year time period had elapsed and the evidence submitted failed to raise any substantial question as to the correctness of the November 14, 2013 merit decision. The Board may only review evidence that was in the record at the time of OWCP's November 14, 2013 decision.¹⁵

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration on the grounds that it was untimely filed and failed to establish clear evidence of error.

¹² See generally *Jaja K. Asaramo*, 55 ECAB 200 (2004). The opinion of a physician that a condition is causally related to an employment incident because the employee was asymptomatic before the injury in insufficient without supporting medical rationale to establish causal relationship.

¹³ See *Mikle W. Williams*, Docket No. 01-1962 (issued June 12, 2002).

¹⁴ *A.F.*, 59 ECAB 714 (2008).

¹⁵ 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2015
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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