

FACTUAL HISTORY

On November 9, 2012 appellant, then a 60-year-old human resources assistant, filed an occupational disease claim (Form CA-2) alleging a work-related emotional condition in the form of depression, high blood pressure, anxiety disorder, panic attacks, sleep disorder, and post-traumatic stress disorder. Appellant asserted that, while working in the casualty office, each time the telephone would ring someone “was dead or dying.” She alleged that she was “on call 24/7” and that her mind was never at rest. Appellant was always on heightened alert for death cases. She stated that working with the medical board/transition center was chaotic and stressful.³

In a November 13, 2012 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. On November 13, 2012 it also requested that the employing establishment submit additional information about appellant’s work duties and other conditions of work.

Appellant provided additional description of her work duties, alleging that she performed extensive work on processing cases where active-duty soldiers had died. Appellant claimed that she had to notify the next of kin of soldiers who were killed in action and that she often had to fingerprint soldiers who had died. She alleged that she was subjected to harassment and discrimination in the workplace and claimed that the employing establishment committed wrongdoing with respect to various administrative matters, including denying her reasonable accommodation for her medical condition.

Appellant submitted statements in which coworkers described the work environment in her work unit at the employing establishment. She also submitted medical evidence from attending Board-certified psychiatrists as well as various administrative documents such as job descriptions and other personnel documents.

In a November 9, 2012 statement, appellant’s supervisor described appellant’s work duties and took issue with a number of her statements characterizing her work duties. The supervisor stated that appellant’s primary duties involved stopping retirement payments for retired veterans who had died. She stated that appellant had limited involvement with the processing of claims for the families of active-duty soldiers who had died. The supervisor clarified that appellant had no involvement with the direct notification of next of kin of any soldier killed in action. She denied that appellant was subjected to harassment/discrimination or that she was not provided reasonable accommodation for her medical condition.

By decision dated April 23, 2013, OWCP denied appellant’s emotional condition claim because she had failed to establish any compensable employment factors. It noted that, because she had not established any compensable employment factors, it was not necessary to consider the medical evidence of record.

In a document received by OWCP on April 25, 2014, appellant requested reconsideration of her emotional condition claim. She argued that the documents she submitted in connection with the reconsideration request supported the employment factors she previously claimed.

³ Appellant retired from the employing establishment on March 31, 2012.

Appellant submitted an April 18, 2014 statement in which a funeral home operator, from the Dorchester Funeral Home, stated that she worked every phase of the funeral process, including coordination of funeral arrangements for active duty soldiers and retirees “to include fingerprinting of the deceased when needed.” The funeral home operator also indicated that appellant was a point of contact listed as being available on a “24/7” basis. Appellant also submitted various personnel documents, including performance appraisals, Forms SF-50, and a position description. She submitted an August 12, 2013 report of Dr. Manoj Dass, an attending Board-certified psychiatrist.

In a May 2, 2014 decision, OWCP denied appellant’s request for further review of the merits of her claim because her request was untimely filed and failed to demonstrate clear evidence of error. It found that her reconsideration request was untimely because it was received on Friday, April 25, 2014, a date more than one year after its prior decision dated April 23, 2013. OWCP found that the evidence and argument submit by appellant did not show clear evidence of error in its April 23, 2013 decision.

LEGAL PRECEDENT

To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant must file his or her application for review 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

OWCP, however, may not deny an application for review solely because the application was untimely filed. When an application for review is untimely filed, OWCP must nevertheless undertake a limited review to determine whether the application establishes “clear evidence of error.”⁶ OWCP regulations and procedure 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.⁷

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.⁸ The evidence must be positive, precise, and explicit and must

⁴ 20 C.F.R. § 10.607(a) (an application for reconsideration must be received by OWCP within one year of the date of OWCP’s decision for which review is sought).

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

⁶ *See* 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁷ 20 C.F.R. § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5 (October 2011). OWCP procedure 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. 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.” *Id.* at Chapter 2.1602.5a.

⁸ *See A.B.*, Docket No. 15-531 (issued June 18, 2015).

manifest on its face that OWCP committed an error.⁹ Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.¹⁰ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹¹ 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.¹²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.¹³ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.¹⁴

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹⁵ However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.¹⁶ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹⁷ To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹⁸ However, for harassment or discrimination to give rise to a compensable disability under FECA,

⁹ 20 C.F.R. § 10.607(b); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

¹⁰ See *Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

¹¹ See *Leona N. Travis*, *supra* note 9.

¹² See *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

¹³ *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁵ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁶ *William H. Fortner*, 49 ECAB 324 (1998).

¹⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.¹⁹

Appellant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.²⁰ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.²¹

ANALYSIS

In its May 2, 2014 decision, OWCP properly determined that appellant filed an untimely request for reconsideration, and therefore she must demonstrate clear evidence of error on the part of OWCP in issuing this decision.²²

Moreover, appellant did not show clear evidence of error by OWCP in its April 23, 2013 decision. The evidence submitted by appellant did not raise a substantial question concerning the correctness of OWCP's decision. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.²³

Appellant submitted an April 18, 2014 statement from a funeral home operator. However, this statement lacks specific details about the actual work tasks appellant performed, or the frequency of when they were performed. Therefore, this statement does not, on its face, show that OWCP erred when it denied appellant's emotional condition claim. The funeral home official stated that appellant was a point of contact listed as being available on a "24/7" basis, but this statement is also vague because it does not identify when appellant was listed as the point of contact or when she was called to duty outside of regular work hours. Appellant also submitted performance appraisals, Forms SF-50, and a position description. However, these documents do not support appellant's claimed employment factors. Appellant submitted an August 12, 2013 report of Dr. Dass, an attending Board-certified psychiatrist. This medical evidence is not

¹⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

²⁰ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

²¹ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

²² Appellant's reconsideration request was received by OWCP on April 25, 2014. OWCP's regulations at 20 C.F.R. § 10.607(a) establish a one-year time limit for requesting reconsideration. The one-year period begins on the date of the original decision, and an application for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought for merit decisions issued on or after August 29, 2011. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011).

²³ *See supra* note 11.

relevant because the claim was not denied on a medical basis. Appellant's claim was denied because she failed to establish any compensable employment factors.²⁴

For these reasons, the evidence submitted by appellant does not raise a substantial question concerning the correctness of OWCP's April 23, 2013 decision and OWCP properly determined that she did not show clear evidence of error in that decision.²⁵

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 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

²⁴ See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992) (finding that when a given claimant has not established any compensable employment factors, it is not necessary for OWCP to consider the medical evidence of record).

²⁵ On appeal appellant alleged that she was subjected to harassment and discrimination in the workplace and that she did not receive reasonable accommodation for her medical condition. However, she did not explain how the evidence and argument she submitted in April 2014 supported these allegations.