

**United States Department of Labor  
Employees' Compensation Appeals Board**

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C.R., Appellant )  
and ) Docket No. 15-1589  
SOCIAL SECURITY ADMINISTRATION, ) Issued: April 15, 2016  
Salem, OR, Employer )  
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)

*Appearances:*  
Appellant, *pro se*  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 16, 2015 appellant filed a timely appeal from a March 25, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed between February 28, 2014, the most recent merit decision, and the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of the claim.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration because it was untimely filed and failed to establish clear evidence of error.

On appeal, appellant cites Board precedent and contends that her request for reconsideration was timely filed. She states that she submitted tracking documentation from the U.S. Postal Service to establish that her request for reconsideration was available for pick-up at the Post Office by OWCP on February 26, 2015, delivered to OWCP on February 27, 2015 at

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

4:00 p.m., and signed by a representative of OWCP. Appellant further contends that OWCP improperly terminated her compensation benefits because she continues to have residuals of her accepted injury and was denied due process prior to the termination. Moreover, she argues that OWCP should not have accorded the weight of the medical evidence to a second opinion physician's report because his opinion was not rationalized, not based on an accurate background, and he was biased and unprofessional. Appellant asserts that the reports of her attending physician should carry more weight than the second opinion physician's report.

### **FACTUAL HISTORY**

On December 20, 1999 appellant, then a 47-year-old social insurance representative, filed an occupational disease claim (Form CA-2) alleging that on May 1, 1999 she first became aware of her stress, depression, and anxiety, and first realized that these conditions were caused or aggravated by factors of her federal employment. On February 21, 2002 OWCP accepted appellant's claim for temporary aggravation of major depressive disorder due to employment factors.

On May 13, 2002 appellant filed a claim for compensation (Form CA-7) from May 13 through June 8, 2002. On July 23, 2002 OWCP denied her claim for compensation. Appellant requested an oral hearing and submitted medical evidence. In a May 12, 2003 decision, an OWCP hearing representative reversed the July 23, 2002 decision, found that the medical evidence did establish that appellant was totally disabled for the claimed period as a result of the accepted employment factors, and placed appellant on the periodic compensation rolls.

After a procedural notice and opportunity to respond, by decision dated October 1, 2010, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits effective that day. It found that the weight of the medical evidence rested with a June 15, 2010 second opinion report of Dr. Eric E. Goranson, a Board-certified psychiatrist. Dr. Goranson opined that appellant had no residuals of her accepted employment-related injury but recommended a gradual period to return to full-time work due to the length of time she had been disabled from work.

On October 15, 2010 appellant requested a telephone hearing with an OWCP hearing representative.

In a May 16, 2011 decision, an OWCP hearing representative affirmed the October 1, 2010 decision. Appellant requested reconsideration and in subsequent merit decisions dated June 15 and August 10, 2012, and February 28, 2014, OWCP denied modification of the termination decision. In its February 28, 2014 decision, OWCP considered appellant's claim that Dr. Goranson's report had not been well reasoned and that Dr. Goranson lacked adequate qualifications. It found these contentions unsupported and insufficient to reverse the termination.

On March 2, 2015 OWCP received appellant's request for reconsideration. Appellant again contended that Dr. Goranson's report should not have been entitled to the weight of the evidence as it was not rationalized and was based on an inaccurate factual and medical background.

Appellant submitted a new January 26, 2015 medical report from Dr. John K. Bellville, an attending psychiatrist, who diagnosed post-traumatic stress disorder (PTSD), panic disorder with agoraphobia, and generalized anxiety disorder caused by described incidents and conditions at work, recurrent major depressive disorder aggravated by the same work incidents and conditions, and insomnia secondary to PTSD and panic disorder with agoraphobia. He opined that appellant's PTSD appeared to be moderate-to-severe and that she could function for a limited amount of time with effort.

In a March 25, 2015 decision, OWCP denied appellant's request for reconsideration because it was untimely filed and failed to demonstrate clear evidence of error on the part of OWCP.

### **LEGAL PRECEDENT**

To be entitled to a merit review of OWCP's decision denying or terminating a benefit, OWCP regulations provide that an application for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>2</sup> The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the discretionary authority granted OWCP under section 8128(a) of FECA.<sup>3</sup> 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.<sup>4</sup>

OWCP, however, may not deny an application for review solely on the grounds that the application was not timely filed. When an application for review is not timely filed, it must nonetheless undertake a limited review of the evidence previously of record to determine whether the new evidence demonstrates clear evidence of error.<sup>5</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. The evidence submitted must not only be of sufficient probative value to create a conflicting medical opinion or establish a clear procedural error, but must be of

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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 (1989).

<sup>4</sup> See also *C.J.*, Docket No. 12-1570 (issued January 16, 2013); *D.G.*, 59 ECAB 455 (2008).

<sup>5</sup> See 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990), *Nelson T. Thompson*, 43 ECAB 919 (1992).

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>6</sup>

In computing the time for requesting reconsideration, the date of the event from which the designated period of time begins to run shall not be included but the last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday.<sup>7</sup>

### ANALYSIS

The Board finds that appellant's request for reconsideration was timely submitted and this case must be remanded to OWCP for application of the appropriate standard of review.

The most recent merit decision in this case was the February 28, 2014 merit decision of OWCP denying modification of its prior decision terminating appellant's wage-loss compensation and medical benefits. Appellant had one calendar year from the date of that decision or until February 28, 2015 to ensure that OWCP received any reconsideration request.<sup>8</sup> The Board notes that February 28, 2015 fell on a Saturday. It is well established that, when a time limitation expires on a nonbusiness day, the limitation is extended to include the next business day.<sup>9</sup> The following Monday was March 2, 2015. Because appellant's request for reconsideration was scanned into the record as received by OWCP on March 2, 2015, the Board finds that it was timely filed.

The case will be remanded to OWCP for consideration of appellant's request under the standard for reviewing a timely request for reconsideration.<sup>10</sup>

On appeal, appellant cites Board precedent and contends that her request for reconsideration was timely filed. As the Board has found, the case will be remanded to OWCP for application of the appropriate standard of review because appellant's request for reconsideration was timely submitted.

Appellant also argues the merits of her case on appeal. As previously noted in the jurisdiction statement, the Board does not have jurisdiction over the merits of the claim. The only issue on appeal is whether OWCP properly denied appellant's request for reconsideration.

### CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration as untimely filed and failing to establish clear evidence of error.

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<sup>6</sup> *Annie L. Billingsley*, 50 ECAB 210 (1998).

<sup>7</sup> *John B. Montoya*, 43 ECAB 1148 (1992); see *Donna A. Christley*, 41 ECAB 90 (1989).

<sup>8</sup> 20 C.F.R. § 10.607(a).

<sup>9</sup> See *M.H.*, Docket No. 13-1901 (issued January 8, 2014); *Debra McDavid*, 57 ECAB 149 (2005); *Angel M. Lebron, Jr.*, 51 ECAB 488 (2000).

<sup>10</sup> The standard is found at 20 C.F.R. § 10.606(b)(3).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 25, 2015 decision of the Office of Workers' Compensation Programs is set aside, and the case remanded for further action consistent with this decision of the Board.

Issued: April 15, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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