



a result of performing her carrier duties. She became aware of her condition and realized that it was causally related to her employment on December 15, 2003. Appellant did not stop work.

By letter dated May 2, 2014, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence, particularly requesting that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant was treated by Dr. James G. Lindley, a Board-certified neurosurgeon, on November 5, 2013, for an injury sustained in 2003. Dr. Lindley reported low back pain, left leg pain, and paresthesia. He noted a recent magnetic resonance imaging (MRI) scan revealed degenerative discs at L4-5 and L5-S1, a disc bulge at L4-5, and lumbar sacral radiculitis. Dr. Lindley noted that appellant could not perform the letter carrier position due to the extensive walking and carrying mail required and recommended appellant work a light-duty position such as a window clerk.

In a decision dated June 18, 2014, OWCP denied appellant's claim as the medical evidence did not support that she had a medical condition causally related to the accepted factors of her employment.

In an appeal form dated June 15, 2015, and received on June 23, 2015, appellant requested reconsideration. She submitted a statement dated June 15, 2015 and asserted that she submitted sufficient medical evidence including reports from Dr. Lindley and another MRI scan report which support that her condition was causally related to carrying mail. Appellant indicated that Dr. Lindley recommended she be given a light-duty window position that she could perform for eight hours a day. She indicated that Dr. Lindley has provided OWCP all the necessary paperwork to establish that her condition is causally related to carrying mail and he would not continue to submit additional reports. Appellant requested that OWCP review the medical evidence from Dr. Lindley, which supported that carrying mail caused her injury, and approve her claim.

By decision dated July 7, 2015, OWCP denied appellant's request for reconsideration as it was untimely and failed to establish clear evidence of error.

### **LEGAL PRECEDENT**

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.<sup>2</sup> This discretionary authority, however, is subject to certain restrictions. For instance, a request for reconsideration must be received within one year of the date of the OWCP decision for which review is sought.<sup>3</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>4</sup>

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<sup>2</sup> 5 U.S.C. § 8128(a); *Y.S.*, Docket No. 08-440 (issued March 16, 2009).

<sup>3</sup> 20 C.F.R. § 10.607(a).

<sup>4</sup> *E.R.*, Docket No. 09-599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

OWCP may not deny a reconsideration request solely because it was untimely filed. When a claimant's application for review is untimely filed, it must nevertheless undertake a limited review to determine whether it establishes clear evidence of error. If an application demonstrates clear evidence of error, OWCP will reopen the case for merit review.<sup>5</sup>

To establish clear evidence of error, a claimant must submit evidence that is relevant to the issue that was decided by OWCP,<sup>6</sup> is positive, precise, and explicit, and manifests on its face that OWCP committed an error.<sup>7</sup> The evidence must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must also shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision for which review is sought. Evidence that does not raise a substantial question is insufficient to establish clear evidence of error. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. A determination of whether the claimant has established clear evidence of error entails a limited review of how the evidence submitted with the reconsideration request bears on the evidence previously of record.<sup>8</sup>

### ANALYSIS

The Board finds that OWCP properly determined that appellant failed to file a timely application for review. As noted, an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.<sup>9</sup> As appellant's request for reconsideration was not received by OWCP until June 23, 2015, more than one year after issuance of the last merit decision by OWCP on June 18, 2014, it was untimely. Consequently, she must establish clear evidence of error by OWCP denying her claim for compensation.

The Board finds that appellant has not established clear evidence of error on the part of OWCP. In a reconsideration request, received on June 23, 2015, she disagreed with OWCP's decision denying her claim for compensation. Appellant asserted that she had submitted sufficient medical evidence, including reports from Dr. Lindley and new MRI scan reports, which supported that her condition was causally related to carrying mail. She noted that Dr. Lindley had recommended she be given a light-duty window position that she could perform for eight hours a day. Appellant stated that Dr. Lindley had provided OWCP all the necessary paperwork to establish that her condition is causally related to carrying mail. She requested OWCP to review the evidence from Dr. Lindley and approve her claim. The Board notes that while appellant addressed her disagreement with OWCP's decision denying her claim for an

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<sup>5</sup> *M.L.*, Docket No. 09-956 (issued April 15, 2010). *See also* 20 C.F.R. § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(c) (September 2011) (the term "clear evidence of error" is intended to represent a difficult standard).

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

<sup>7</sup> *Leona N. Travis*, 43 ECAB 227 (1991).

<sup>8</sup> *J.S.*, Docket No. 10-385 (issued September 15, 2010); *B.W.*, Docket No. 10-323 (issued September 2, 2010).

<sup>9</sup> 20 C.F.R. § 10.607(a).

occupational disease, her general allegations do not establish clear evidence of error as it does not raise a substantial question as to the correctness of OWCP's most recent merit decision which denied appellant's claim for an occupational disease.

The Board notes that the underlying issue is medical in nature and that on reconsideration appellant did not submit additional medical evidence. The Board notes that clear evidence of error is intended to represent a difficult standard. The submission of 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 still not sufficient to establish clear evidence of error.<sup>10</sup>

Therefore OWCP properly found that appellant's undated statement received on June 23, 2015 did not establish clear evidence of error. It properly denied appellant's reconsideration request.

On appeal, appellant asserts that she should not have filed a new Form CA-2, rather her injury should have been accepted under claim number xxxxxx955.<sup>11</sup> She indicates that because OWCP would not approve any further doctors' appointments she has had to use her own health insurance. Appellant further asserts that she timely sent in all document and appeals. However, as noted, the Board does not have jurisdiction over the merits of the claim. Appellant has not presented evidence or argument that raises a substantial question as to the correctness of OWCP's decision for which review is sought.

### CONCLUSION

The Board finds that appellant's request for reconsideration was untimely filed and did not establish clear evidence of error.

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<sup>10</sup> *D.G.*, 59 ECAB 455 (2008).

<sup>11</sup> Claim number xxxxxx955 is not before the Board on the present appeal.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 7, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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