

this appeal, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

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

FACTUAL HISTORY

On March 29, 2012 appellant, then a 59-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 16, 2012, she sustained torticollis as a result of straining her neck in her postal vehicle. She also noted that she had returned to work on that date for the first time in two years. A supervisor noted that the claim was not for traumatic injury.

By letter dated April 11, 2012, the employing establishment controverted appellant's claim. It noted that there was doubt regarding whether her claimed injury was consequential or whether it was a new traumatic injury. In another letter of the same date, a representative of the employing establishment related that appellant had an accepted claim for an injury to the right shoulder under OWCP File No. xxxxxx904. She noted that appellant had been off work due to this injury since January 7, 2010. The representative further explained that the employing establishment had presented appellant a modified assignment within her restrictions. Appellant, however, had not wanted to return to work because she had moved a long distance away in the intervening two years. The employing establishment also noted that it had been informed of a severe injury appellant sustained as a child, and that her neck periodically bothered her due to this injury.

Appellant submitted an attending physician's report dated March 23, 2012. Dr. Stuart J. Glassman, Board-certified in physical medicine and rehabilitation, diagnosed appellant with thoracic strain at the upper trapezius. He checked a box noting that the condition was caused by an employment activity and that it was her first day back at work in two years. Appellant also submitted a form dated March 27, 2012 signed by a physical therapist as well as several reports signed by registered nurses.

In a form dated March 19, 2012, Dr. David Hirsch, Board-certified in emergency medicine, recommended work restrictions for appellant.

Dr. Glassman noted in his April 12, 2012 report that appellant had refused further examination on that date. He noted, "[A]t this point, I am not very clear on the exact extent of her problems as well as the extent that is related to work or may be related to other activities such as plane rides and being on vacation or her personal issues in her home."

By decision dated May 25, 2012, OWCP denied appellant's claim for compensation finding that she had not submitted sufficient evidence to establish a causal relationship, referencing Dr. Glassman's April 12, 2012 report.

³ 5 U.S.C. § 8101 *et seq.*

By letter dated October 9, 2015, appellant, through counsel, requested reconsideration of the May 25, 2012 decision. Counsel noted that OWCP had not received his May 7, 2015 letter requesting reconsideration.

On November 23, 2015 OWCP received counsel's letter dated May 7, 2015. Counsel also submitted a brief arguing that the duties appellant performed on March 16, 2012 were outside of her medical restrictions. He asserted that OWCP had inappropriately shifted the burden of proof to appellant by considering her traumatic injury on March 16, 2012 as a new injury rather than her previously accepted injury under OWCP File No. xxxxxx904.

With the request for reconsideration, counsel attached the attending physician's report dated March 23, 2012 and the medical form dated March 19, 2012, both previously of record. He also submitted several limited-duty job offers and records of OWCP decisions under OWCP File No. xxxxxx904.

By decision dated November 23, 2015, OWCP denied appellant's request for reconsideration. It found that her request was untimely filed and failed to demonstrate clear evidence of error. OWCP noted that appellant had filed for a traumatic injury occurring on March 16, 2012 and that she alleged her newly diagnosed conditions of torticollis and thoracic strain at the upper trapezius were causally related to employment activity on that date.

LEGAL PRECEDENT

To be entitled to a merit review of an OWCP decision denying or terminating a benefit, an application for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.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 may not deny an application for review solely because the application was untimely filed. When an application for review is untimely filed, it must nevertheless undertake a limited review to determine whether the application demonstrates clear evidence of error.⁶ OWCP regulations and procedures 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 demonstrates clear evidence of error on the part of OWCP.⁷

⁴ 20 C.F.R. § 10.607(a).

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 *Id.* at § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5(a) (February 2016). OWCP's 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."

To demonstrate 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 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

The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP such that it abused its discretion in denying merit review in the face of such evidence.¹³

ANALYSIS

In its November 23, 2015 decision, OWCP properly determined that appellant failed to file a timely application for review. Its regulations provide that the one-year time limitation period for requesting reconsideration begins on the date of the original OWCP decision.¹⁴ Appellant's request for reconsideration was filed on October 9, 2015, over three years after OWCP's May 25, 2012 decision.¹⁵ Therefore, she must demonstrate clear evidence of error on the part of OWCP in issuing the May 25, 2012 decision.

Appellant has not demonstrated clear evidence of error on the part of OWCP in issuing its May 25, 2012 decision. She did not submit the type of positive, precise, and explicit evidence manifesting on its face that OWCP committed an error in denying her traumatic injury claim.¹⁶

Appellant's request for reconsideration contained medical reports previously of record, records of limited-duty job offers, records of OWCP decisions under OWCP File No. xxxxxx904, and a brief from counsel arguing that appellant had demonstrated clear evidence of error. The basis for the rejection of her original claim was that she had not established a causal relationship between her claimed condition and the factors of her employment as of

⁸ See *Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

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 See *Pete F. Dorso*, 52 ECAB 424, 427 (2001); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

¹⁴ 20 C.F.R. § 10.607(a).

¹⁵ The Board notes that even if the date of appellant's earlier reconsideration request of May 7, 2015 were used, appellant's request for reconsideration would remain untimely.

¹⁶ *Supra* note 9.

March 16, 2012. The documents submitted on reconsideration were not of 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 the denial of her claim.¹⁷

As noted by OWCP in its November 23, 2015 decision, appellant claimed both new factors of her employment on March 16, 2012 and new medical conditions as work related on her Form CA-1 and in subsequent medical reports submitted to the record. As such, OWCP properly adjudicated her claim as a new traumatic injury rather than as a recurrence or consequential injury to the accepted OWCP File No. xxxxxx904.¹⁸

Appellant did not submit any new medical evidence that would establish her diagnosed conditions as causally related to the events of March 16, 2012. For these reasons, the evidence submitted by appellant does not raise a substantial question concerning the correctness of OWCP's May 25, 2012 decision, and OWCP properly determined that appellant failed to demonstrate clear evidence of error in that decision.¹⁹

CONCLUSION

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

¹⁷ See *Velvetta C. Coleman*, 48 ECAB 367, 370 (1997).

¹⁸ 20 C.F.R. § 10.5(ee).

¹⁹ *Supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 28, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board