

2014, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.⁴

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.

On appeal appellant's representative asserted that OWCP incorrectly found appellant's request for reconsideration was untimely filed and failed to demonstrate clear evidence of error. He further alleged that OWCP had grossly mishandled the medical evidence and failed to properly docket his case file.

FACTUAL HISTORY

On January 19, 2011 appellant, then a 33-year-old contract specialist, filed a traumatic injury claim (Form CA-1) alleging that on January 17, 2011 he sustained medical conditions due to his employment. He also filed an occupational disease claim (Form CA-2) on January 19, 2011 alleging that on January 19, 2011 he first became aware of a medical condition which had been caused or aggravated by his employment.⁵

On March 11, 2013 OWCP received an undated report from Dr. Ahn diagnosing bilateral carpal tunnel syndrome, right de Quervain's tenosynovitis, and right thumb and middle trigger fingers. Dr. Ahn attributed the conditions to appellant's repetitive work duties of computer keyboard entry, typing, and repetitive upper extremity use. He noted that repetitive keyboard use was consistent with appellant's type of injury.

On January 22, 2014 OWCP accepted the conditions of bilateral carpal tunnel syndrome, right and middle finger trigger fingers, and de Quervain's tenosynovitis.

On February 26, 2014 appellant filed a claim for wage-loss compensation (Form CA-7) for the period January 19, 2011 through February 28, 2014.

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the December 24, 2015 nonmerit decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

⁵ On September 14, 2012 OWCP received a Form CA-2 from appellant alleging an emotional injury due to harassment and retaliation for filing an appeal with the Merit Protection Systems Board. Appellant stated that on September 12, 2012 he first became aware that his condition had been caused or aggravated by his employment. On October 22, 2012 OWCP received three occupational disease claims (Form CA-2) from appellant alleging that an emotional condition and right trigger finger had been caused by his employment. On January 3, 2013 OWCP received additional CA-2 forms from appellant alleging that on January 19, 2011 he first realized his emotional condition was due to employment factors.

In an April 28, 2014 report, Dr. Ahn opined that appellant has been totally disabled from working since January 19, 2011.

On May 12, 2014 OWCP received an undated report from Dr. Sahgal in which he opined that appellant was totally disabled from working. Dr. Sahgal observed that appellant's carpal tunnel condition aggravated his emotional conditions as he was unable to perform the duties of his position prior to his injury.

On May 20, 2014 OWCP received an undated report from Dr. Mehta diagnosing carpal tunnel syndrome and emotional conditions due to his employment. Dr. Mehta reported that appellant was disabled from working beginning January 19, 2011 due to his employment-related physical and emotional conditions.

By decision dated July 31, 2014, OWCP denied appellant's claim for wage-loss compensation for the period January 19, 2011 through February 28, 2014.

In an August 8, 2014 report, Dr. Ahn reported that appellant has been totally disabled from working for the past three years due to his accepted orthopedic conditions. He described the treatment that appellant has been given and opined that, due to impact on his sensory and motor nerves, appellant is unable to perform the duties of his position.

In an August 8, 2014 report, Dr. Nader Armanious, a Board-certified neurologist, reviewed the medical evidence and noted the accepted conditions were bilateral carpal tunnel syndrome, right and middle trigger fingers, and radial styloid tenosynovitis. He concluded that there was no doubt that appellant sustained wage loss due to the accepted employment conditions and should be granted wage-loss compensation.

On August 13, 2014 OWCP received an undated report from Dr. Ahn opining that appellant continued to be disabled from performing his job as a contract specialist and has been disabled since January 2011.

On September 12, 2014 OWCP received an undated report from Dr. Sahgal attributing the conditions of major depression, anxiety disorder, and panic disorder to appellant's employment and provided a description of appellant's duties. Dr. Sahgal opined that appellant was rendered totally disabled by his employment-related emotional condition.

By decision dated November 18, 2014, OWCP denied modification. It found the evidence insufficient to establish that appellant was entitled to wage-loss compensation for the period January 19, 2011 to February 28, 2014 for the accepted carpal tunnel condition.

In a letter dated February 2, 2015, appellant's representative requested reconsideration on the denial of his claim for lost compensation.

On February 3, 2015 OWCP received an undated report from Dr. Sahgal. Dr. Sahgal noted that OWCP had accepted the conditions of bilateral carpal tunnel syndrome, right de Quervain's tenosynovitis, and right thumb and middle trigger fingers. He opined that his prior reports support that appellant's emotional condition was a direct result of his employment

duties. Dr. Sahgal noted that appellant had a history of being harassed at work and that accommodations were not made for the disruption of his work by his carpal tunnel condition.

By decision dated March 19, 2015, OWCP denied appellant's request for reconsideration of the November 18, 2014 decision without reviewing the merits.

On August 11, 2015 OWCP received appellant's representative request for reconsideration of the November 18, 2014 decision denying wage-loss compensation. Appellant's representative contended that OWCP erred in its analysis of causal relationship and the denial of appellant's claim for wage-loss compensation. He further contended that appellant was entitled to wage-loss compensation and placement on the periodic rolls for temporary total disability.

By decision dated November 6, 2015, OWCP denied reconsideration of the November 18, 2014 decision without reviewing the merits.

On November 19, 2015 OWCP received a letter dated November 12, 2015 from appellant's representative requesting reconsideration. Appellant's representative argued that OWCP has misinterpreted FECA statute in denying appellant wage-loss compensation for his accepted condition and that appellant should be compensated for his wage-loss and/or placed on the periodic rolls for temporary total disability. He argued that the medical evidence submitted established that appellant's disability was causally related to the accepted work condition. In support of his request, appellant submitted medical evidence as set forth below.

In an October 26, 2015 report, Dr. Armanious reviewed the medical evidence and noted the accepted conditions were bilateral carpal tunnel syndrome, right and middle trigger fingers, and radial styloid tenosynovitis. He concluded that there was no doubt that appellant sustained wage loss due to the accepted employment conditions and should be granted wage-loss compensation.

In an August 21, 2015 report, Dr. Ahn opined that appellant was totally disabled due to the conditions accepted by OWCP. He provided results from an electromyography (EMG) study, described appellant's duties, and the lack of an accommodation by the employing establishment.

Dr. Wen, in a November 2, 2015 report, reiterated his opinion that appellant was totally disabled.

On December 23, 2015 OWCP received appellant's representative reconsideration request dated November 26, 2015 noting that he had previously requested reconsideration in a letter dated November 12, 2015. Appellant's representative argued that the medical evidence submitted was sufficient to warrant wage-loss compensation and placement on the periodic rolls for temporary total disability.

By decision dated December 24, 2015, OWCP denied appellant's claim as it found the request to be untimely filed and failed to establish clear evidence of error.⁶

LEGAL PRECEDENT

To be entitled to a merit review of OWCP's 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.⁷ 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.⁸

OWCP, however, 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.⁹ 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.¹⁰

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹¹ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.¹² Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹³ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁴ This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of

⁶ The Board also notes that OWCP has not responded to counsel's outstanding request for reconsideration on the denial of appellant's emotional condition claim. Lacking a final decision by OWCP, that issue is therefore not before the Board. See 20 C.F.R. § 501.2(c).

⁷ 20 C.F.R. § 10.607(a).

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

⁹ See 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

¹⁰ *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5(c) (October 2011). OWCP procedures further provide 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. *Id.* at Chapter 2.1602.5(a).

¹¹ See *Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

¹² See *Leona N. Travis*, 43 ECAB 227, 240 (1991).

¹³ See *Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

¹⁴ See *supra* note 12.

record and whether the new evidence demonstrates clear error on the part of OWCP.¹⁵ To demonstrate clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but 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.¹⁶

OWCP procedures were changed effective August 29, 2011. Section 10.607 of the new regulations provide that the date of the reconsideration request for timeliness purposes was changed from the date the request was mailed to the date the request was received by OWCP.¹⁷

ANALYSIS

The Board finds that OWCP properly determined that appellant failed to file a timely application for review. As noted above, an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.¹⁸ As appellant's request for reconsideration was not received by OWCP until November 19, 2015, more than one year after issuance of the most recent merit decision dated November 18, 2014, it was untimely. Consequently, he must demonstrate clear evidence of error by OWCP in its decision finding that he was not entitled to wage-loss compensation for his accepted bilateral carpal tunnel condition, right and middle finger trigger fingers, and de Quervain's tenosynovitis.¹⁹

In accordance with internal guidelines and Board precedent, OWCP properly proceeded to perform a limited review to determine whether appellant's application for review demonstrated clear evidence of error, which would warrant reopening his case for merit review under section 8128(a) of FECA, notwithstanding the untimeliness of his application. It reviewed the evidence submitted in support of his application for review, but found that it did not demonstrate that OWCP's prior decisions were in error.

The Board finds that the evidence submitted by appellant in support of his application for review does not raise a substantial question as to the correctness of OWCP's decision and is insufficient to demonstrate clear evidence of error. The underlying issue is wage-loss compensation due to his accepted bilateral carpal tunnel condition, right and middle finger trigger fingers, and de Quervain's tenosynovitis.

The medical evidence submitted included reports from Dr. Armanious, Dr. Ahn, and Dr. Wen. In his October 26, 2015 report, Dr. Armanious noted the accepted conditions and opined that appellant should be granted wage-loss compensation due to the accepted conditions. Dr. Ahn, in his August 21, 2015 report, reiterated his opinion that appellant was totally disabled

¹⁵ See *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

¹⁶ *Leon D. Faidley, Jr.*, *supra* note 8.

¹⁷ 20 C.F.R. § 10.607.

¹⁸ *Id.* at § 10.607(a).

¹⁹ *Id.* at § 10.607(b); see *Debra McDavid*, 57 ECAB 149 (2005).

due to the accepted conditions. In a November 2, 2015 report, Dr. Wen reiterated that appellant's emotional condition was employment related and that he was totally disabled. Dr. Wen's report does not find that appellant was totally disabled due to the accepted condition. The reports from Drs. Armanious and Dr. Ahn are duplicative of prior reports submitted.²⁰ 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 of a miscalculation in a schedule award). Evidence such as a detailed, well-rationalized report, which if submitted prior to OWCP's denial, would have created a conflict in medical opinion requiring further development, is not clear evidence of error and would not require a review of a case.²¹

Appellant has not, through the reports from Dr. Ahn, Dr. Armanious, and Dr. Wen, and as required by 20 C.F.R. § 10.607(b), demonstrated clear evidence of error on the part of OWCP in finding that he was entitled to wage-loss compensation for the period January 19, 2011 through February 28, 2014. His request for reconsideration does not establish on its face that OWCP's November 18, 2014 merit decision was erroneous. Therefore, the Board finds that appellant has not demonstrated clear evidence of error in OWCP's finding that he failed to establish entitlement to wage-loss compensation for the period January 19, 2011 through February 28, 2014.

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

On appeal, appellant's representative asserts that OWCP has lost and misplaced medical evidence. He also asserts that the evidence of record establishes appellant's entitlement to wage-loss compensation for the accepted carpal tunnel condition. However, as noted, the Board does not have jurisdiction over the merits of the claim. In addition, appellant's representative repeated his reconsideration arguments on appeal. As noted above, these arguments are insufficient to demonstrate clear evidence of error.

CONCLUSION

The Board finds that appellant's application for reconsideration was untimely filed and failed to show clear evidence of error.

²⁰ See *A.F.*, Docket No. 11-1297 (issued December 20, 2011); *D.K.*, 59 ECAB 141 (2007) (evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case).

²¹ *J.S.*, Docket No. 10-385 (issued September 15, 2010); *James R. Mirra*, 56 ECAB 738 (2005); *Annie L. Billingsley*, 50 ECAB 210 (1998).

ORDER

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

Issued: October 18, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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