



## ISSUE

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

## FACTUAL HISTORY

On January 7, 2014 appellant, then a 61-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that she sprained her left wrist and tendons in her hand when she picked up a tray of mail and twisted her wrist. She stopped work on January 7, 2014.

By letter dated February 25, 2014, OWCP advised appellant that her claim originally appeared to be a minor injury which resulted in minimal or no time loss from work. It indicated that her claim was administratively handled to allow limited medical payments but the merits of the claim had not been formally adjudicated. OWCP advised that, because appellant had not returned to work in a full-time capacity her claim would be formally adjudicated. It requested that she submit additional information including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed injury.

On December 31, 2013 appellant was seen by Dr. Bruce Weinstein, a Board-certified internist. Dr. Weinstein noted that appellant had a history of right forearms/wrist tendinitis and bilateral carpal tunnel syndrome related to repetitive movements at work. He diagnosed left wrist sprain and recommended a wrist brace and light duty.<sup>4</sup>

Appellant was treated for left wrist pain by Dr. Teli Leung, a Board-certified internist, from January 7 to March 13, 2014. Appellant's history was significant for right forearm/wrist tendinitis and bilateral carpal tunnel syndrome. She reported performing repetitive duties using her left wrist at work. Dr. Leung diagnosed left wrist sprain/tendinitis aggravated by repetitive movements. He returned appellant to light duty avoiding repetitive movements and lifting.

By decision dated April 2, 2014, OWCP denied appellant's claim because the medical evidence of record did not establish that the claimed medical condition was causally related to the established work-related events.

On April 14, 2014 appellant requested an oral hearing before an OWCP hearing representative which was held on July 30, 2014. She submitted a February 21, 2014 magnetic resonance imaging (MRI) scan of the left wrist which revealed an ulnar positive variance, triangular fibrocartilage complex tear (TFCC) associated with chondromalacia, mild dorsal displacement of the distal ulna, old tiny avulsion fracture of the ulnar styloid, multifocal trace extensor tenosynovitis, multifocal sacular dilations along the ulnar neurovascular bundle and mild synovitis.

In reports dated March 25 to April 1, 2014, Dr. Thomas Breen, a Board-certified orthopedic surgeon, diagnosed ulnar impaction syndrome and recommended surgery. Appellant was treated by Dr. John V. Shufflebarger, a Board-certified orthopedic surgeon, who performed

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<sup>4</sup> This report was also signed by Dr. Cyrus Nensey, a Board-certified internist.

a steroid injection into the left wrist on April 18, 2014. Dr. Shufflebarger diagnosed questionable TFCC degenerative changes.

In a decision dated October 31, 2014, an OWCP hearing representative affirmed the decision dated April 2, 2014.

In an undated request received on November 2, 2015, appellant requested reconsideration of the October 31, 2014 OWCP decision. She requested that her claim be accepted and submitted an October 7, 2015 report from Dr. Yael Rosen, a Board-certified internist. Dr. Rosen noted that appellant sustained a work-related left wrist injury on December 23, 2013 during the course of her work when lifting heavy trays of mail. He noted that appellant was treated by Dr. Nensey on December 31, 2013 and was diagnosed with left wrist sprain. Dr. Rosen advised that appellant attempted to return to work for one week, but experienced severe pain in the left wrist and was unable to perform her job. He noted that a February 21, 2014 MRI scan revealed a TFCC tear. Dr. Rosen indicated that due to the job injury appellant was out of work from February 2014 to September 2014.

By decision dated June 3, 2016, OWCP denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate 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>5</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 OWCP's decision for which review is sought.<sup>6</sup> The Board has found that imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>7</sup>

OWCP may not deny a reconsideration request solely because it was untimely filed. When a claimant's application for review is untimely filed, OWCP must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error. If an application demonstrates clear evidence of error, OWCP must reopen the case for merit review.<sup>8</sup>

To demonstrate clear evidence of error, a claimant must submit evidence that is relevant to the issue that was decided by OWCP,<sup>9</sup> is positive, precise, and explicit, and manifests on its face that OWCP committed an error.<sup>10</sup> The evidence must not only be of sufficient probative

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

<sup>6</sup> 20 C.F.R. § 10.607(a).

<sup>7</sup> *E.R.*, Docket No. 09-599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>8</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) (February 2016) (the term "clear evidence of error" is intended to represent a difficult standard).

<sup>9</sup> *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>10</sup> *Leona N. Travis*, 43 ECAB 227 (1991).

value to create a conflict in medical opinion or demonstrate 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 demonstrate 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 demonstrated 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>11</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>12</sup> As appellant's request for reconsideration was not received by OWCP until November 2, 2015, more than one year after issuance of OWCP's October 31, 2014 decision, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP denying her claim for compensation.

The Board also finds that appellant has failed to demonstrate clear evidence of error. In her reconsideration request, appellant disagreed with OWCP's decision denying her claim for compensation. In the reconsideration request, she referenced a new report from Dr. Rosen and requested that her claim be accepted based on this new evidence. The Board notes that, while appellant addressed her disagreement with OWCP's decision denying her claim for a traumatic injury, her disagreement does not demonstrate clear evidence of error as it does not raise a substantial question as to the correctness of OWCP's most recent merit decision.

Appellant submitted an October 7, 2015 report from Dr. Rosen who noted that appellant had a work-related left wrist injury on December 23, 2013 when lifting heavy trays of mail. Dr. Rosen indicated that appellant was treated by Dr. Nensey on December 31, 2013 and was diagnosed with left wrist sprain. He advised that appellant attempted to return to work for one week but experienced severe pain in the left wrist and was unable to perform her duties. Dr. Rosen noted that a February 21, 2014 MRI scan revealed a TFCC tear and opined that due to the job injury appellant was out of work from February 2014 until September 2014. While Dr. Rosen provided some support for causal relationship, the Board notes that clear evidence of error is intended to represent a difficult standard. 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.<sup>13</sup> The Board finds that this evidence does not rise to the level of clear evidence of error.

The Board finds that OWCP properly found that appellant's undated request for reconsideration received on November 2, 2015 was untimely filed and failed to demonstrate clear evidence of error.

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<sup>11</sup> *J.S.*, Docket No. 10-385 (issued September 15, 2010); *B.W.*, Docket No. 10-323 (issued September 2, 2010).

<sup>12</sup> *Supra* note 6.

<sup>13</sup> *D.G.*, 59 ECAB 455 (2008).

On appeal counsel asserts that appellant timely submitted the request for reconsideration of the October 31, 2014 decision. As noted above, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.<sup>14</sup> In this case, the reconsideration request was received by OWCP on November 2, 2015 and there is no evidence in the record at the time of the June 3, 2016 decision that it was timely received. On appeal appellant submitted a tracking receipt from the post office; however, the Board may not consider new evidence on appeal.<sup>15</sup> She further asserted that OWCP failed to properly develop her claim. Appellant indicated that she originally filed her claim as a traumatic injury and then requested that the claim be converted to an occupational disease but OWCP ignored this request. 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 failed to demonstrate clear evidence of error.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 3, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 24, 2017  
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

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<sup>14</sup> *Supra* note 6.

<sup>15</sup> *Supra* note 3.