

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

C.D., Appellant)

and)

U.S. POSTAL SERVICE, PROCESSING &)
DISTRIBUTION CENTER, Albuquerque, NM,)
Employer)

**Docket No. 17-1074
Issued: August 28, 2017**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

On April 17, 2017 appellant filed a timely appeal from a March 30, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Board docketed the appeal as No. 17-1074.

The March 30, 2017 decision found that appellant's request for reconsideration was untimely and failed to demonstrate clear evidence of error with respect to OWCP's November 23, 2015 merit decision.¹ OWCP acknowledged that it received appellant's request for reconsideration on November 22, 2016, but calculated it to be "366 days" after the November 23, 2015 merit decision. Consequently, it considered appellant's November 22, 2016 request to be untimely pursuant to 20 C.F.R. § 10.607(a).

¹ Appellant's claim has been accepted for right knee sprain and medial meniscus tear, which arose on July 2, 2013. In its November 23, 2015 merit decision, OWCP declined to expand appellant's traumatic injury claim to include an alleged bilateral shoulder consequential injury.

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.² OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.³ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁴ OWCP will consider an untimely request for reconsideration only if the request demonstrates “clear evidence of error” on the part of OWCP in its “most recent merit decision.”⁵ When a request is timely filed, a different standard of review applies. A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁷

Appellant had one year from the November 23, 2015 merit decision to timely request reconsideration. One year from November 23, 2015 was November 23, 2016. As OWCP received appellant’s request for reconsideration on November 22, 2016 her request was timely pursuant to 20 C.F.R. § 10.607(a).⁸ Because OWCP erred in finding appellant’s request untimely and applied the wrong standard of review the March 30, 2017 decision shall be set aside, and the case remanded for proper consideration of appellant’s timely request for reconsideration pursuant to 20 C.F.R. § 10.606(b)(3).

² This section provides in pertinent part: “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application.” 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.607.

⁴ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be “received” by OWCP within one year of OWCP’s decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the “received date” in the Integrated Federal Employees’ Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁵ 20 C.F.R. § 10.607(b). To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by OWCP. *See Dean D. Beets*, 43 ECAB 1153 (1992). The evidence must be positive, precise, and explicit and it must be apparent on its face that OWCP committed an error. *See Leona N. Travis*, 43 ECAB 227 (1991). It is not enough to merely show that the evidence could be construed to produce a contrary conclusion. Evidence that does not raise a substantial question concerning the correctness of OWCP’s decision is insufficient to establish clear evidence of error. *See Jesus D. Sanchez*, 41 ECAB 964 (1990). 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. *Thankamma Mathews*, 44 ECAB 765, 770 (1993).

⁶ 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* § 10.608(a), (b).

⁸ *See W.H.*, Docket No. 14-0092 (issued April 28, 2014); Federal (FECA) Procedure Manual, *supra* note 4.

IT IS HEREBY ORDERED THAT the March 30, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this order of the Board.

Issued: August 28, 2017
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