



OWCP accepted the claim for lumbosacral strain and chronic lumbosacral syndrome.<sup>2</sup> Appellant stopped work on the date of injury and received compensation for intermittent and total disability. She returned to modified employment on March 7, 1992, but stopped work on March 27, 1992. The employing establishment separated appellant from employment on November 22, 1994.

Appellant, on September 7, 2007, filed a notice of recurrence (Form CA-2a) alleging that she sustained a recurrence of disability on March 12, 1992 causally related to her May 23, 1977 employment injury. She stopped work on March 27, 1992 and returned to private employment in February 2001.

By decision dated October 30, 2007, OWCP found that appellant failed to establish an employment-related recurrence of disability beginning March 12, 1992. It determined that she had not demonstrated either that the employing establishment withdrew her limited-duty position or submitted medical evidence showing that she was unable to perform her work duties.

In a report dated May 29, 2012, Dr. Joel Melvin, a psychologist, diagnosed dysthymia, major depressive episode, and panic disorder without agoraphobia. He found that appellant's condition was "exacerbated by chronic pain which resulted from an occupational injury in 1977."<sup>3</sup>

On September 29, 2015 appellant filed a claim for compensation (Form CA-7) requesting compensation from March 31, 1992 to December 31, 2005. In an October 8, 2015 response, OWCP advised her that she should follow the appeal rights from the October 30, 2007 decision. It further requested that appellant submit medical evidence supporting that she was disabled for the period claimed.

Appellant, on April 15, 2016, requested reconsideration of the October 30, 2007 decision. She asserted that due to mental stress she had been unable to timely conduct business with OWCP. Appellant related that she tried to resume work because of her financial situation, but her pain worsened. She maintained that physicians recommended surgery, but it was not approved and that "[s]tress, pain, and incompetence were experiences that affected" her ability to work.

By decision dated May 31, 2016, OWCP denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error. It found that she had not raised an argument alleging any error in the prior decision.

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<sup>2</sup> By decision dated January 19, 1984, OWCP terminated appellant's compensation after finding that she was no longer disabled due to her May 23, 1977 employment injury. In a decision dated July 24, 1984, an OWCP hearing representative reversed the January 19, 1984 decision and found that OWCP should reinstate wage-loss compensation beginning January 26, 1984.

<sup>3</sup> On December 5, 2011 appellant telephoned OWCP and advised that she had depression. OWCP noted that it had not received medical evidence since 2004 and informed her that she should file a notice of recurrence if she believed that she had symptoms resulting from her work injury. On February 16, 2012 appellant requested "retirement under workers' comp[ensation]." OWCP retrieved her case record from the federal records center.

On appeal appellant asserts that she resumed work due to financial hardship, but was unable to obtain positions both inside and outside of federal employment due to her back condition.

### **LEGAL PRECEDENT**

OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a) of FECA.<sup>4</sup> As once such limitations, 20 C.F.R. § 10.607 provides that an application for reconsideration must be sent within one year of the date of the OWCP decision for which review is sought.<sup>5</sup> OWCP will consider an untimely application only if the application demonstrates clear evidence on the part of OWCP in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.<sup>6</sup>

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 medical report which, if submitted prior to the 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 the case on the Director’s own motion.<sup>7</sup> To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP. The evidence must be positive, precise, and explicit and must manifest on its face that it committed an error.<sup>8</sup>

### **ANALYSIS**

OWCP properly determined that appellant failed to file a timely request for reconsideration. Its procedures provide that the one-year time limitation for requesting reconsideration begins on the date of the original OWCP decision.<sup>9</sup> A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.<sup>10</sup> As appellant’s April 15, 2016 request for reconsideration was submitted more than one year after October 30, 2007, the date of the last merit decision, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in denying her claim for compensation.<sup>11</sup>

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> 20 C.F.R. § 10.607. OWCP procedures changed effective August 29, 2011. Section 10.607 of the new regulations provides 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. 20 C.F.R. § 10.607(a).

<sup>6</sup> *Id.* at § 10.607.

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5(a) (February 2016).

<sup>8</sup> *Robert F. Stone*, 57 ECAB 292 (2005); *Leon D. Modrowski*, 55 ECAB 196 (2004); *Darletha Coleman*, 55 ECAB 143 (2003).

<sup>9</sup> 20 C.F.R. § 10.607(a).

<sup>10</sup> *Robert F. Stone*, *supra* note 8.

<sup>11</sup> 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

In her April 15, 2016 request for reconsideration, appellant contended that she could not comply with time limitation provisions due to mental stress. She did not, however, submit any medical evidence supporting that she was mentally incompetent and thus incapable of filing a request for reconsideration during the year following October 30, 2007.<sup>12</sup>

Appellant indicated that she attempted to work due to financial difficulties, but her pain worsened. She also alleged that she had experienced stress that negatively impacted her ability to work. The relevant issue, however, is whether appellant established a recurrence of disability beginning in March 1992 causally related to her May 23, 1977 employment injury. As this issue is medical in nature, it can only be resolved through the submission of medical evidence.<sup>13</sup> Appellant's lay opinion that she could not work is irrelevant as the Board has held that lay individuals are not competent to render a medical opinion.<sup>14</sup> Consequently, her contentions are insufficient to demonstrate clear evidence of error by OWCP.

The only medical evidence submitted subsequent to the last merit decision of October 30, 2007 is Dr. Melvin's May 29, 2012 report. Dr. Melvin diagnosed dysthymia, major depressive disorder, and panic disorder without agoraphobia. He advised that chronic pain from a work injury aggravated appellant's condition. Dr. Melvin did not, however, address the relevant issue of whether she was unable to work beginning March 1992 due to her May 23, 1977 employment injury. In order to demonstrate clear evidence of error, it was appellant's duty to submit evidence relevant to the issue which was decided by OWCP.<sup>15</sup> The Board finds that she failed to submit such evidence.

On appeal appellant discusses the findings of physicians who had found her unable to work following her injury. She resumed work due to financial hardship, but was unable to obtain positions due to her back condition. Again, however, appellant's lay opinion is irrelevant to the medical issue in this case, which can only be resolved through the submission of probative medical evidence from a physician.<sup>16</sup>

In order to demonstrate clear evidence of error, the evidence submitted must be of sufficient probative value to raise a substantial question as to the correctness of OWCP's decision.<sup>17</sup> The evidence appellant submitted on reconsideration fails to meet this standard.

### 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.

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<sup>12</sup> See *E.P.*, Docket No. 16-1402 (issued December 15, 2016); *I.F.*, Docket No. 15-0625 (issued June 2, 2015).

<sup>13</sup> *George C. Vernon*, 54 ECAB 319 (2003).

<sup>14</sup> *Gloria J. McPherson*, 51 ECAB 441 (2000).

<sup>15</sup> *Howard Y. Miyashiro*, 51 ECAB 253 (1999).

<sup>16</sup> See *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *supra* note 14.

<sup>17</sup> See *Veletta C. Coleman*, 48 ECAB 367 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 31, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 22, 2017  
Washington, DC

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

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

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