

shoulders, neck, and back as a result of repetitive keyboard use. She was assigned modified work on March 7, 2003. On March 21, 2003 OWCP accepted appellant's claim for bilateral wrist tendinitis.

On August 24, 2006 OWCP granted appellant a schedule award for 46 percent permanent impairment of her bilateral upper extremities.

OWCP accepted the additional condition of left shoulder tendinitis on August 24, 2007.

On February 3, 2009 OWCP granted appellant an additional award for 13 percent permanent impairment of her left upper extremity, for a total of 36 percent permanent impairment of the left upper extremity.

On October 21, 2009 OWCP accepted right shoulder impingement syndrome.

In a report dated April 22, 2013, Dr. Robert Harrison, Board-certified in occupational medicine, rendered 13 percent permanent impairment rating for appellant's upper extremities on the basis of a bilateral shoulder labral tear and 2 percent upper extremity permanent impairment rating on the basis of bilateral carpal tunnel syndrome. The date of maximum medical improvement (MMI) was April 1, 2013.

A district medical adviser (DMA) reviewed Dr. Harrison's report on May 19, 2013. She noted that he had not applied the modifiers correctly for appellant's shoulders. The DMA noted that the total permanent impairment of the right upper extremity equaled two percent and the left upper extremity equaled nine percent under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*. She further noted that this represented no additional impairment, given appellant's previous schedule awards.

By decision dated August 7, 2013, OWCP denied an additional schedule award for appellant's bilateral shoulder conditions or carpal tunnel syndrome.

On March 3, 2014 appellant requested reconsideration of OWCP's August 7, 2013 decision. With her request, she provided a December 19, 2013 report from Dr. Harrison. Using the A.M.A., *Guides*, he calculated that appellant had 13 percent upper extremity permanent impairment due to shoulder impingement and 2 percent upper extremity permanent impairment due to bilateral carpal tunnel syndrome.

On May 27, 2014 OWCP reviewed the merits of appellant's claim and denied modification of its August 7, 2013 decision. It noted that the December 19, 2013 report from Dr. Harrison was similar to his April 22, 2013 report and failed to provide an additional percentage of impairment.

On September 23, 2014 appellant requested reconsideration of OWCP's May 27, 2014 decision. With her request, she submitted a letter from Dr. Harrison, which again provided an impairment rating of 13 percent for appellant's right shoulder.

By decision dated March 24, 2015, OWCP reviewed the merits of appellant's claim and denied modification of its May 27, 2014 decision. It noted that appellant had no additional permanent impairment beyond the previously awarded 36 percent permanent impairment of the right upper extremity and 23 percent permanent impairment of the left upper extremity.

On April 14, 2015 appellant requested reconsideration of OWCP's March 24, 2015 decision. She included with her request a letter outlining her restrictions and requesting an additional schedule award.

By decision dated June 11, 2015, OWCP denied appellant's request for reconsideration, finding that she had not submitted any new and relevant evidence with her request.

On June 16, 2015 appellant again requested reconsideration of OWCP's March 24, 2015 decision. With her request, she attached a June 8, 2015 note from Dr. Harrison, which discussed a physical examination and appellant's work restrictions.

By decision dated June 25, 2015, OWCP denied appellant's request for reconsideration. It noted that the June 8, 2015 note from Dr. Harrison did not provide an impairment rating.

On March 28, 2016 appellant again requested reconsideration of OWCP's March 24, 2015 decision. She noted that her physician had rendered seven percent permanent impairment rating and argued that her left and right shoulder injuries should have been considered separate claims. Appellant attached a September 21, 2015 report from Dr. Abdullah Khafagy, a specialist in preventative medicine, including the results of an examination and discussion of her work restrictions. Dr. Khafagy stated that appellant had intermittent numbness and tingling in all digits, as well as weakness. He diagnosed her with bilateral shoulder impingement; bilateral carpal tunnel syndrome; tenosynovitis of the hand and wrist; bilateral unspecified disorders of the bursae and tendons of the shoulder region; and rotator cuff syndrome. On examination Dr. Khafagy noted that appellant had limited range of motion of the bilateral wrists. He further noted limited range of motion of the fingers of the right hand, and normal range of motion of the fingers of the left hand. Dr. Khafagy observed that appellant's right shoulder was not aligned and drooped compared to the left. Both the left and right shoulders had limited range of motion, greater on the right than the left.

By decision dated April 1, 2016, OWCP denied appellant's request for reconsideration. It found that her request was untimely filed and failed to demonstrate clear evidence of error.

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 its decision for which review is sought.² The Board has found that the imposition of the one-year

² 20 C.F.R. § 10.607(a).

limitation does not constitute an abuse of the discretionary authority granted to OWCP under section 8128(a) of FECA.³

OWCP may not deny an application for review solely on the grounds that 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 establishes clear evidence of error.⁴ 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 shows clear evidence of error on the part of OWCP.⁵

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.⁶ The evidence must be positive, precise, and explicit, and must manifest on its face that OWCP committed an error.⁷ Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.⁸ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.⁹ 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.¹⁰

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.¹¹ In order to establish 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.¹²

³ 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

⁴ See 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁵ 20 C.F.R. § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5(a) (February 2016). OWCP's procedures 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."

⁶ See *Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

⁷ 20 C.F.R. § 10.607(b); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

⁸ See *Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

⁹ See *Leona N. Travis*, *supra* note 7.

¹⁰ See *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

¹¹ See *Pete F. Dorso*, 52 ECAB 424, 427 (2001); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

¹² See *Velvetta C. Coleman*, 48 ECAB 367, 370 (1997).

ANALYSIS

In the present case, OWCP issued a merit decision with respect to a schedule award dated March 24, 2015. Appellant submitted a request for reconsideration that was received on March 28, 2016. When the underlying compensation issue is a schedule award, an initial question is whether the claimant is requesting reconsideration or claiming an increased schedule award. Even if appellant has requested reconsideration, if there is new and relevant evidence with respect to an increased permanent impairment, then a claimant may be entitled to a merit decision on the issue,¹³ but when a claimant does not submit any relevant evidence with respect to an increased schedule award, then OWCP may properly determine that appellant has filed an application for reconsideration of a schedule award decision.¹⁴ In this case, she did not submit any relevant evidence with respect to an increased permanent impairment, and therefore OWCP properly considered her submission as an application for reconsideration.

In its April 1, 2016 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 merit decision.¹⁵ Appellant's request for reconsideration was received on Monday, March 28, 2016, four days after the one-year deadline of March 24, 2016. Because her request was untimely filed, she must demonstrate clear evidence of error on the part of OWCP in issuing its March 24, 2015 decision.

The Board finds that appellant has failed to demonstrate clear evidence of error on the part of OWCP in issuing its March 24, 2015 decision. Appellant did not submit the type of positive, precise, and explicit evidence manifesting on its face that OWCP committed an error.

With her request for reconsideration, appellant submitted a report from Dr. Khafagy, which did not provide an impairment rating or a date of MMI. This report did not evaluate appellant's permanent impairment pursuant to the A.M.A., *Guides*.¹⁶ This report, therefore, did not establish that appellant's prior schedule award was clearly erroneous, or that she might be entitled to an additional schedule award.¹⁷ As such, it does not raise a substantial question regarding the degree of appellant's permanent impairment. Appellant's own statement, which was not medical evidence, also does not establish that the previous schedule awards were clearly erroneous.¹⁸

For these reasons, the evidence submitted by appellant does not raise a substantial question concerning the correctness of OWCP's March 24, 2015 decision, and OWCP properly determined that appellant did not demonstrate clear evidence of error in that decision.

¹³ See *Linda T. Brown*, 51 ECAB 115 (1999).

¹⁴ See *W.J.*, Docket No. 12-1746 (issued February 5, 2013).

¹⁵ 20 C.F.R. § 10.607(a).

¹⁶ *J.M.*, Docket No. 15-1634 (issued September 16, 2016).

¹⁷ *Id.*, see also *K.D.*, Docket No. 15-524 (issued August 3, 2015).

¹⁸ *Supra* note 16.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

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.

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2017
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board