



## **FACTUAL HISTORY**

On July 11, 2014 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 7, 2013 she suffered a mild concussion when she fell out of her truck onto a cement ground while loading.

A December 7, 2013 patient visit information form from Harford Memorial Hospital indicated that patient instructions were provided for muscle strain, concussion, and head injury, no wake-up (adult).

In a July 11, 2014 statement, an individual, whose signature is illegible, noted that he/she was informed on December 7, 2013 that appellant fell out of the back of her truck while loading.

In a July 21, 2014 letter, OWCP advised appellant of the deficiencies in her claim and requested additional factual and medical evidence from a qualified physician supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition. Appellant was provided 30 days to submit the requested information. No further information was received.

By decision dated July 21, 2014, OWCP determined that appellant was not entitled to continuation of pay during her absence from work for the period December 8, 2013 and continuing.

By decision dated August 22, 2014, OWCP denied appellant's claim as there was no medical evidence containing a medical diagnosis in connection with the established work event of December 7, 2013.

On August 25, 2015 OWCP received appellant's August 17, 2015 request for reconsideration. Appellant described her injury and indicated that only the emergency room visit was to be considered. She stated that she had submitted all the records given to her from the hospital to "Kay" on July 29, 2015.

With her reconsideration request, appellant submitted a July 14, 2014 statement from the employing establishment regarding continuation of pay. Also submitted were a July 28, 2014 authorization for release of health information along with December 7, 2013 notes from the emergency department of Upper Chesapeake Medical Center and diagnostic testing. Laura Gaskill, a certified physician assistant, noted the history of the work injury and provided a clinical impression of head injury, mild concussion, and muscle strain. Appellant was discharged in good condition. The hospital notes were electronically signed by Dr. Carla Janson, a Board-certified emergency medical physician.

By decision dated November 12, 2015, OWCP denied appellant's request for reconsideration on the basis that it was untimely filed and failed to demonstrate clear evidence of error.

## LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>3</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>4</sup> 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.<sup>5</sup> 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.”<sup>6</sup> The request must establish on its face that such decision was erroneous.<sup>7</sup> Where a request is untimely and fails to present any clear evidence of error, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>8</sup>

## ANALYSIS

By decision dated August 22, 2014, OWCP denied appellant’s traumatic injury claim because she failed to satisfy the medical component of fact of injury. At the time, appellant had not submitted a physician’s opinion diagnosing a medical condition in connection with the December 7, 2013 employment incident. On August 25, 2015 OWCP received appellant’s request for reconsideration. Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the “received date” in iFECS.<sup>9</sup> In this instance, the iFECS record reflects that OWCP received appellant’s August 17, 2015 request for reconsideration on August 25, 2015, which was more than one year after the last merit decision of record dated August 22, 2014.<sup>10</sup> As appellant’s request was untimely filed, she must

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<sup>3</sup> 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).

<sup>4</sup> 20 C.F.R. § 10.607.

<sup>5</sup> *Id.* at § 10.607(a). 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.

<sup>6</sup> *Id.* at § 10.607(b).

<sup>7</sup> *Id.* 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).

<sup>8</sup> 20 C.F.R. § 10.608(b).

<sup>9</sup> *Supra* note 4.

<sup>10</sup> *J.M.*, Docket No. 15-1586 (issued March 23, 2016) (the Board explained that according to OWCP procedures, the received date is determined by the document received date in iFECS).

demonstrate clear evidence of error on the part of OWCP in its denial of her traumatic injury claim.<sup>11</sup>

The Board finds that the arguments and evidence submitted by appellant in support of her request for reconsideration did not raise a substantial question as to the correctness of OWCP's August 22, 2014 decision.

In her request for reconsideration, appellant described the December 7, 2013 employment incident. The Board notes, however, that the factual occurrence of the December 7, 2013 work incident is not in dispute. OWCP denied the claim because the medical evidence of record failed to establish that the December 7, 2013 incident caused an injury.

Appellant submitted a complete hospital record, including diagnostic testing, of her December 7, 2013 visit. Dr. Janson provided a clinical impression of head injury, mild concussion, and muscle strain, the hospital documentation was electronically signed by Dr. Janson.<sup>12</sup> This evidence, however, is insufficient to establish that OWCP erred in its denial of appellant's claim.<sup>13</sup> 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 merit denial might require additional development of the claim, is insufficient to establish clear evidence of error.<sup>14</sup> Although the hospital documents submitted are supportive of appellant's claim to establish a firm medical diagnosis, they do not establish clear evidence of error on the part of OWCP as they were submitted after the August 22, 2014 merit decision.<sup>15</sup> Thus, the hospital report and diagnostic testing do not raise a substantial question as to the correctness of OWCP's August 22, 2014 merit decision or demonstrate clear evidence of error.<sup>16</sup> OWCP properly declined to reopen appellant's case under 5 U.S.C. § 8128(a).

### **CONCLUSION**

The Board finds that appellant's August 25, 2015 request for reconsideration was untimely filed and failed to demonstrate clear evidence of error. Therefore, she is not entitled to further merit review.

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

<sup>12</sup> Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner is considered medical evidence only when countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

<sup>13</sup> See *G.B.*, Docket No. 13-1260 (issued December 2, 2013); see also *W.R.*, Docket No. 09-2336 (issued June 22, 2010).

<sup>14</sup> Federal (FECA) Procedure Manual, *supra* note 15 at Chapter 2.1602.3(c) (March 2011).

<sup>15</sup> *G.B.*, *supra* note 13.

<sup>16</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 12, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 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