

FACTUAL HISTORY

On January 24, 2014 appellant, a 62-year-old surface mining reclamation specialist, filed an occupational disease claim (Form CA-2) alleging that her bipolar disorder was aggravated when she was denied an assignment beyond the scope of her daily duties when a similarly situated employee was allowed an extra assignment outside the scope of his normal duties. She indicated that she first became aware of her claimed condition on “January 1, 1970” and first realized its relation to her federal employment on August 30, 2013. Appellant did not stop work.

In a September 20, 2013 narrative statement, appellant further alleged harassment and discrimination in her workplace. She stated that, from the Fall of 2011 until the selection of a supervisor position in August 2012, there was so much ill-will toward her from her superiors and some of her colleagues that she started to become depressed, despite taking her regularly prescribed psychiatric medications. After a lengthy investigation, the selection for the supervisor’s position was finally made and the most qualified person was appointed, appellant had no issue with the selection thereof. At that time, appellant stated that she was forced to change job duties from those she had performed for the past 26 years and had no one to help train her. She alleged that this change in job duties resulted in an aggravation of her bipolar disorder and many days of missed work and assignments.

On December 6, 2013 Dr. Getulio V. Tovar, a Board-certified psychiatrist, diagnosed bipolar disorder. He noted that in 2011 appellant’s supervisor retired and appellant was told by the office that neither she nor her husband would be supervisors because they could not supervise each other. Appellant filed a complaint and eventually her husband was appointed supervisor, and as a result, her supervisor became someone else in the office. Since that time, she reported that she had been passed up for special assignments and felt very stressed at work. Appellant felt that her work had exacerbated her bipolar disorder.

Appellant submitted a March 26, 2014 letter of partial acceptance of her Equal Employment Opportunity (EEO) complaint of discrimination against the employing establishment. It stated that her allegation of sexual harassment in 2012 had not been accepted for investigation.

By decision dated July 10, 2014, OWCP denied appellant’s claim, finding that the evidence of record failed to establish that she actually experienced the employment factor(s) alleged to have caused her injury.

On July 27, 2014 appellant requested an oral hearing by a representative of the Branch of Hearings and Review.

A telephonic hearing was held before an OWCP hearing representative on February 9, 2015. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

By decision dated March 24, 2015, OWCP’s hearing representative affirmed the July 10, 2014 decision, finding that appellant had failed to establish any compensable employment factors.

On July 17, 2017 appellant requested reconsideration and submitted a July 3, 2017 narrative statement reiterating her allegations that her emotional condition was aggravated by harassment and discrimination at work.

Appellant subsequently submitted a copy of an EEO bench decision dated June 13, 2017 which found that the employing establishment failed to provide her with an effective reasonable accommodation to continue performing the essential functions of her job and allow her to enjoy the equal benefits and privileges of employment.

By decision dated July 26, 2017, OWCP denied appellant's request for reconsideration, finding 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.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 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).⁵ 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."⁶ The request must establish on its face that such decision was erroneous.⁷ Where a request is untimely and fails to demonstrate clear evidence of error, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁸

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue decided by OWCP. The evidence must be positive, precise, and explicit, and it must manifest on its face that OWCP committed an error.⁹ It is not enough merely to show that the evidence

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 own motion or on application." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.607.

⁴ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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).

⁵ *Id.* at Chapter 2.1602.4b.

⁶ 20 C.F.R. § 10.607(b).

⁷ *Id.*

⁸ *Id.* at § 10.608(b).

⁹ 20 C.F.R. § 10.607(b); *Fidel E. Perez*, 48 ECAB 663 (1997).

could be construed so as to produce a contrary conclusion.¹⁰ The evidence submitted must not only be of sufficient probative value to create a conflicting medical opinion or establish a clear procedural error, but must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.¹¹

The Board makes an independent determination of whether a claimant has demonstrated 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.¹²

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration as was untimely filed and failed to demonstrate clear evidence of error.

OWCP's regulations¹³ establish a one-year time limit for requesting reconsideration, which begins on the date of the original OWCP merit decision. Timeliness is determined by the received date as recorded in iFECS.¹⁴ The most recent merit decision was OWCP's March 24, 2015 decision. Appellant had one year from the date of that decision to make a timely request for reconsideration. As appellant's July 17, 2017 request for reconsideration was received more than one year after the March 24, 2015 merit decision, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in the denial of her claim.¹⁵

The Board finds that the evidence submitted by appellant in support of her request for reconsideration does not raise a substantial question as to the correctness of OWCP's March 24, 2015 merit decision or shift the weight of the evidence of record in her favor.

The term clear evidence of error is intended to represent a difficult standard.¹⁶ Even a detailed, well-rationalized medical report which would have created a conflict in medical opinion requiring further development if submitted prior to issuance of the denial decision, does not constitute clear evidence of error.¹⁷ It is not enough to show that evidence could be construed so

¹⁰ *Leona N. Travis*, 43 ECAB 227, 240 (1991).

¹¹ *Annie L. Billingsley*, 50 ECAB 210 (1998).

¹² *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765 (1993).

¹³ *Id.* at § 10.607(a); see *Alberta Dukes*, 56 ECAB 247 (2005).

¹⁴ *Supra* note 4 at Chapter 2.1602.4 (January 2004); see *C.B.*, Docket No. 13-1732 (issued January 28, 2014).

¹⁵ 20 C.F.R. § 10.607(b); see *Debra McDavid*, 57 ECAB 149 (2005).

¹⁶ *Supra* note 4 at Chapter 2.1602.5 (October 2011); see *Dean D. Beets*, *supra* note 6.

¹⁷ See *D.G.*, 59 ECAB 455 (2008); *L.L.*, Docket No. 13-1624 (issued December 5, 2013).

as to produce a contrary conclusion. Instead, the evidence must shift the weight in appellant's favor.¹⁸

In support of her reconsideration request, appellant submitted a July 3, 2017 narrative statement reiterating her allegations that her emotional condition was aggravated by harassment and discrimination at work accompanied by a copy of an EEO bench decision dated June 13, 2017 which found that the employing establishment failed to provide her with an effective reasonable accommodation. The new evidence does not show error with respect to OWCP's March 24, 2015 merit decision, which found that the employment exposure(s) did not occur as alleged. Appellant has not explained how the submission of this evidence raises a substantial question concerning the correctness of OWCP's decision. Her claim was denied because she failed to establish any compensable employment factors.¹⁹ The narrative statement is repetitive of evidence previously of record and does not show error with respect to the March 24, 2015 decision.²⁰ The Board has held that repetitive or cumulative evidence is insufficient to shift the weight of the evidence in favor of the claimant.²¹ Additionally, the Board has long held that grievances and EEO complaints by themselves do not establish that workplace harassment or unfair treatment occurred.²² The evidence submitted does not support appellant's allegations of harassment or discrimination on the part of her supervisors or coworkers. Therefore, this evidence does not, on its face, show that OWCP erred when it denied her emotional condition claim.²³

The Board finds that the evidence appellant submitted on reconsideration is insufficient to *prima facie* shift the weight of the evidence in favor of her claim or raise a substantial question that OWCP erred in its March 24, 2015 decision. Thus, OWCP properly denied her request for reconsideration because it was untimely filed and failed to demonstrate clear evidence of error.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

¹⁸ See *M.N.*, Docket No. 15-0758 (issued July 6, 2015).

¹⁹ See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992) (finding that when a claimant has not established any compensable employment factors, it is not necessary for OWCP to consider the medical evidence of record).

²⁰ See *L.M.*, Docket No. 14-1738 (issued March 3, 2015) (where the claimant resubmitted medical reports previously of record, the Board found that the evidence was duplicative and failed to establish clear evidence of error).

²¹ See *D.E.*, 59 ECAB 438 (2008); *A.F.*, Docket No. 11-1297 (issued December 20, 2011).

²² See *Parley A. Clement*, 48 ECAB 302 (1997).

²³ See *J.E.*, Docket No. 15-0131 (issued September 9, 2015).

ORDER

IT IS HEREBY ORDERED THAT the July 26, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2018
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