



## ISSUE

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

## FACTUAL HISTORY

On April 23, 2015 appellant, a then 35-year-old sack sorting machine operator, filed an occupational disease claim (Form CA-2) alleging bipolar depression which he attributed to a hostile work environment including harassment and "deceptive practices" by management staff. He noted that he first became aware of his claimed condition on April 5, 2014 and first realized its relation to his federal employment on February 19, 2015. Appellant stopped work on February 23, 2015.

In a May 19, 2015 e-mail message, Tour 3 Manager C.L. stated that she had no knowledge of appellant's allegation that management was aware of his emotional condition until one week prior when she received his CA-2 claim form. She indicated that he was questioned by his supervisor, W.A., regarding why he did not report for overtime. C.L. stated that appellant "started getting very loud in the main aisle which leads to the employee's entrance, when he was informed by [W.A.] that he would have to leave with all the loud talking and calling [W.A.] 'stupid,' [but] he kept standing in the aisle talking loud and [belligerently]."

In an undated narrative statement, W.A., indicated that he did not give appellant instruction to stay in his unit for overtime. He stated that it was standard operating procedure to report to the tour office for an overtime assignment. W.A. stated that appellant's coworkers heard the overtime call and reported to the tour office for their overtime assignments, but appellant did not, so he questioned him about where he was for overtime. He contended that he did not harass appellant and was not aware of his emotional condition.

In a June 1, 2015 letter, the employing establishment controverted appellant's claim.

By development letter dated June 5, 2015, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted medical evidence, a September 25, 2015 narrative statement detailing a timeline of his past Equal Employment Opportunity (EEO) complaints, and a copy of his EEO settlement dated September 10, 2014.

By decision dated January 29, 2016, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that his emotional condition arose during the course of his federal employment and within the scope of compensable work factors.

On January 31, 2017 appellant requested reconsideration. He submitted a statement dated January 25, 2017 arguing that he developed an emotional condition due to a number of incidents that occurred in a hostile work environment. Appellant further submitted EEO investigative affidavits and documentation related to his prior EEO complaints and resubmitted a copy of his September 10, 2014 EEO settlement.

By decision dated March 1, 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.<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 it 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**

The Board finds that OWCP properly determined that appellant's request for reconsideration was untimely filed. OWCP's regulations<sup>9</sup> and procedures establish a one-year time limit for requesting reconsideration. Timeliness is determined by the "received date" as

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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 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). 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). 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> 20 C.F.R. § 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> *Id.* at § 10.607(a); *see Alberta Dukes*, 56 ECAB 247 (2005).

recorded in iFECS.<sup>10</sup> The most recent merit decision was OWCP's January 29, 2016 decision. As appellant's reconsideration request was not received by OWCP until January 31, 2017, more than one year after the January 29, 2016 decision, it was untimely filed. Consequently, he must demonstrate clear evidence of error by OWCP in the denial of his claim.<sup>11</sup>

The Board finds that appellant has demonstrated clear evidence of error on the part of OWCP. In its March 1, 2017 decision, OWCP denied appellant's request for reconsideration because it was untimely filed and failed to demonstrate clear evidence of error. It indicated that it had received a "recent letter requesting reconsideration" of its January 29, 2016 decision and denied appellant's request based on a decision "outlined in the enclosure." The Board finds, however, that appellant had submitted more than a single letter requesting reconsideration. In support of his January 31, 2017 reconsideration request, appellant submitted a statement arguing that he developed an emotional condition due to a number of incidents that occurred in a hostile work environment. Appellant further submitted EEO investigative affidavits and documentation related to his prior EEO complaints and resubmitted a copy of his September 10, 2014 EEO settlement. In its March 1, 2017 decision, OWCP failed to provide an explanation as to why its prior decision was improperly decided. It indicated that it had provided reasons for its denial which were "outlined in [an] enclosure," but no such enclosure exists within the decision or in the case file. OWCP's failure to provide factual findings and explain the basis for its conclusion that appellant did not demonstrate clear evidence of error precludes the Board's review of the decision.<sup>12</sup>

The Board, having duly considered the matter, finds that OWCP failed to properly explain the findings with respect to the issue presented. Thus, OWCP, in its March 1, 2017 decision, did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision, *i.e.*, whether he demonstrated clear evidence that OWCP's last merit decision was incorrect.<sup>13</sup>

The Board will therefore set aside OWCP's March 1, 2017 decision and remand the case for an appropriate decision on appellant's untimely reconsideration request.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

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<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (January 2004); *see C.B.*, Docket No. 13-1732 (issued January 28, 2014).

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

<sup>12</sup> *Id.* at § 10.126; *see also R.C.*, Docket No. 16-0563 (issued May 4, 2016).

<sup>13</sup> *See id.* at § 10.126.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 1, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

Issued: December 13, 2018  
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