

FACTUAL HISTORY

On June 15, 2016 appellant, a 27-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right foot injury at approximately 3:00 p.m. that day when she was descending steps while in the performance of duty.

In a June 29, 2016 letter, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and to respond to its inquiries.

In response, appellant submitted a series of physical therapy reports dated May 24 through July 22, 2016.

Appellant further submitted reports dated July 11 and 18, 2016 from Dr. Richard Schaller, a Board-certified emergency medicine specialist, who diagnosed acute right ankle pain and acute pain of right knee.

By decision dated August 10, 2016, OWCP accepted that the June 15, 2016 employment incident occurred as alleged, but denied the claim because the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed right ankle and right knee contusions and the accepted June 15, 2016 employment incident.

On October 12, 2016 appellant requested reconsideration and submitted additional medical evidence in support of her claim, including a September 14, 2016 report from Dr. Liza Rodriguez, a Board-certified anesthesiologist, who diagnosed right ankle tendinitis and concluded that appellant was injured after a near fall off stairs while delivering mail.

By decision dated December 21, 2016, OWCP denied modification of its prior decision because the medical evidence of record was insufficient to establish that appellant's right ankle tendinitis was causally related to the accepted June 15, 2016 employment incident.

Appellant requested reconsideration on December 26, 2017 as recorded in the Integrated Federal Employees' Compensation System (iFECS).

By decision dated January 9, 2018, 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, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).³ One such limitation provides that an application for reconsideration must be received within one year of the date of OWCP's decision for which

² See *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

review is sought.⁴ The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted OWCP under 5 U.S.C. § 8128(a).⁵

Section 10.607(b) provides that OWCP will consider an untimely application for reconsideration only if it demonstrates clear evidence of error by OWCP in its most recent merit decision. The reconsideration request must establish that OWCP's decision was, on its face, erroneous.⁶

To demonstrate clear evidence of error a claimant must submit evidence relevant to the issue which was decided by OWCP.⁷ The evidence must be positive, precise, and explicit and must be manifest on its face that OWCP committed an error.⁸ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.⁹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁰ 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.¹¹

To demonstrate 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 The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP such that OWCP abused its discretion in denying merit review in the face of such evidence.¹³

ANALYSIS

The Board finds that OWCP properly determined that appellant's request for reconsideration was untimely filed. OWCP's regulations and procedures establish a one-year time limitation for requesting reconsideration, which begins on the date of the original OWCP

⁴ 20 C.F.R. § 10.607(a).

⁵ See *Jesus D. Sanchez*, *supra* note 2; *F.R.*, Docket No. 09-575 (issued January 4, 2010).

⁶ 20 C.F.R. § 10.607(b).

⁷ See *Nancy Marcano*, 50 ECAB 110, 114 (1998); *Dean D. Beets*, 43 ECAB 1153, 157-58 (1992).

⁸ See *Fidel E. Perez*, 48 ECAB 663, 665 (1997); *M.L.*, Docket No. 09-956 (issued April 15, 2010).

⁹ See *Richard L. Rhodes*, 50 ECAB 259, 264 (1999).

¹⁰ See *Leona N. Travis*, 43 ECAB 227, 241 (1991).

¹¹ See *Jimmy L. Day*, 48 ECAB 652 (1997); *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

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

¹³ See *Pete F. Dorso*, 52 ECAB 424 (2001); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

decision.¹⁴ The Board has held that for OWCP decisions issued on or after August 29, 2011, the date of the application for reconsideration is the “received date” as recorded in iFECS.¹⁵ The most recent merit decision was OWCP’s December 21, 2016 decision denying appellant’s traumatic injury claim. Appellant had one year from the date of that decision to make a timely request for reconsideration. Because appellant’s request was not received by OWCP until December 26, 2017, it was filed outside the one-year time period and is therefore untimely. Consequently, appellant must demonstrate clear evidence of error by OWCP in the denial of her claim.¹⁶

In its December 21, 2016 decision, OWCP denied appellant’s traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed right ankle tendinitis and the accepted June 15, 2016 employment incident. To demonstrate clear evidence of error, it is not sufficient merely to show that the evidence could be construed so as to produce a contrary conclusion. The term clear evidence of error is intended to represent a difficult standard.¹⁷ Herein, the Board finds that appellant did not submit additional evidence along with her untimely request for reconsideration. Without the submission of additional evidence, appellant has not met her burden of proof 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.

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

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016); *see supra* note 12.

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

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5.a (February 2016); *see Dean D. Beets*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2018
Washington, DC

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

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

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