

a result of repetitively taping packages, cutting labels, and prepping and grooming mail. She first became aware of her condition and first realized that it was causally related to factors of her federal employment on November 27, 2013. Appellant did not immediately stop work. A March 17, 2014 electromyogram (EMG) revealed moderate carpal tunnel syndrome on the left. After initially denying the claim on March 10, 2015 OWCP accepted left carpal tunnel syndrome.

Appellant came under the treatment of Dr. Anthony Palmaccio, a Board-certified orthopedic surgeon, on April 24, 2015, who performed a left carpal tunnel release and modified neurolysis and diagnosed carpal tunnel syndrome of the left hand. In reports dated June 10 and 24, 2015, Dr. Palmaccio noted that she was rehabilitating nicely after her left carpal tunnel release surgery, but experienced numbness at the tips of her index, long finger, and ring finger. He recommended physical therapy and indicated that appellant could not return to her job. OWCP paid wage-loss compensation beginning April 24, 2015.

On July 24, 2015 OWCP referred appellant to Dr. Noubar A. Didizian, a Board-certified orthopedist for a second opinion, to determine if the accepted conditions had resolved. In an August 12, 2015 report, Dr. Didizian diagnosed left carpal tunnel syndrome and status post carpal tunnel release medically connected to the injury. He opined that there was no aggravation or permanency of appellant's condition and he found no objective findings to indicate residuals postsurgery for left carpal tunnel release. Dr. Didizian opined that she did not require any further medical treatment related to the left carpal tunnel and the surgery of April 24, 2015. He noted that appellant achieved full mobility, full range of motion, negative provocative test, normal neurologic examination, and two-point discrimination indicating the carpal tunnel was resolved. Dr. Didizian opined that she had no limitation and could return to work full time at her preinjury level.

On September 21, 2015 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits finding that Dr. Didizian's August 12, 2015 report established no continuing residuals of her work-related conditions.

In a statement dated September 28, 2015, appellant asserted that she developed trigger finger as a result of her work duties.

By decision dated October 26, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits effective October 23, 2015 finding that Dr. Didizian's report established no continuing residuals of her accepted conditions.

Appellant continued to submit reports from Dr. Palmaccio dated July 22 to August 19, 2015 who treated her for left carpal tunnel syndrome. Dr. Palmaccio noted that she recently had return of pain and paresthesias along the median nerve distribution. He noted findings of positive Tinel's sign and recommended a wrist splint. On August 19, 2015 Dr. Palmaccio noted that appellant was asymptomatic and he released her to work with restrictions and, on September 2, 2015, he released her to full duty. In a report dated February 4, 2016, he noted that she presented with tingling and paresthesias of the left hand along the median nerve distribution after heavy lifting at work. Dr. Palmaccio returned appellant to work with a lifting restriction and recommended splints.

Appellant was treated by Dr. Stephen J. Masceri, a Board-certified physiatrist, on June 2, 2016, for pain, numbness, and paresthesias of both hands. Dr. Masceri noted that she had bilateral carpal tunnel releases four or five years prior.² He noted an EMG revealed prolongation of the left median motor and sensory distal latencies. Dr. Masceri diagnosed moderate carpal tunnel syndrome on the left. He recommended a wrist splint.

On July 26, 2017 appellant filed a notice of recurrence (Form CA-2a) alleging a recurrence of disability on June 13, 2017 causally related to her accepted work injury. She noted that at the time of the recurrence she was on restricted duty.

In a letter dated July 28, 2017, OWCP informed appellant that her medical and compensation entitlement had been terminated in a decision dated October 26, 2015. As a result, adjudication of appellant's recurrence claim was unnecessary and no further action would be taken on her claim.

On August 9, 2017 appellant requested reconsideration of her claim for left carpal tunnel syndrome. She advised that she was submitting a letter from her physician and an EMG report so that she could obtain treatment for her condition.

Appellant submitted a July 21, 2017 report from Dr. Palmaccio who noted a history of injury on November 27, 2013 and treatment for left carpal tunnel syndrome which included left carpal tunnel release. Dr. Palmaccio indicated that she recovered for a period of time and then developed increasing symptoms of carpal tunnel in the left hand. He noted a recent EMG revealed a recurrence of carpal tunnel syndrome. Dr. Palmaccio recommended a splint and exploratory carpal tunnel surgery.

An EMG study of both upper extremities dated July 13, 2017 revealed moderate left mononeuropathy of the median nerve at the wrist (moderate carpal tunnel syndrome), no evidence of right mononeuropathy of the median nerve at the wrist or cervical radiculopathy, and further development of median nerve damage at the wrist when compared to the previous test in 2014.

By decision dated August 14, 2017, OWCP denied appellant's August 9, 2017 reconsideration request, finding that it 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 OWCP's decision for which review is sought.³ When determining the one-year period for requesting reconsideration, the last day of the period should be included unless it is a Saturday,

² The record indicates that appellant has a separate claim for right carpal tunnel syndrome, OWCP File No. xxxxxx190. This other claim is not before the Board on the present appeal.

³ 20 C.F.R. § 10.607(a).

Sunday, or a federal holiday.⁴ Timeliness is determined by the document receipt date (*i.e.*, the “received date” in OWCP’s Integrated Federal Employees’ Compensation System).⁵ The Board has found that the imposition of the one-year limitation does not constitute an abuse of the discretionary authority granted OWCP under section 8128(a) of FECA.⁶

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 demonstrates clear evidence of error.⁷ 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 demonstrates clear evidence of error on the part of OWCP.⁸

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

OWCP procedures note that 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 an error (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.¹⁰ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹¹

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016); *see also M.A.*, Docket No. 13-1783 (issued January 2, 2014).

⁵ *Id.* at Chapter 2.1602.4(b) (February 2016).

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

⁷ *See* 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁸ *Id.* at § 10.607(b); *supra* note 4 at Chapter 2.1602.5(a) (February 2016).

⁹ *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁰ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 4 at Chapter 2.1602.5(a) (February 2016).

¹¹ *See D.S.*, Docket No. 17-0407 (issued May 24, 2017).

ANALYSIS

The Board finds that, in its August 14, 2017 decision, OWCP properly determined that appellant's request for reconsideration was untimely filed. Its regulations provide that the one-year time limitation for requesting reconsideration begins on the date of the last merit decision.¹² The last merit decision in this case was dated October 26, 2015. Because appellant's request for reconsideration was received on August 9, 2017, more than one year after the October 26, 2015 merit decision, OWCP properly determined that it was untimely filed.¹³ Therefore, appellant must demonstrate clear evidence of error on the part of OWCP with regard to its August 14, 2017 decision.

The Board further finds that appellant has failed to demonstrate clear evidence of error on the part of OWCP. In a letter dated August 9, 2017, appellant requested reconsideration of her claim for left carpal tunnel syndrome. She advised that she was submitting a letter from her physician and an EMG report so that she could obtain treatment for her condition. The Board notes that, while appellant disagreed with OWCP decision terminating her compensation, this does not demonstrate clear evidence of error as it does not raise a substantial question as to the correctness of OWCP's most recent merit decision which terminated appellant's wage-loss compensation and medical benefits for left carpal tunnel syndrome finding that the second opinion physician, Dr. Didizian, established no continuing residuals of her accepted conditions.

Following the termination of her compensation benefits, appellant continued to submit medical reports, including those from Dr. Palmaccio and Dr. Masceri. Dr. Masceri's June 2, 2016 report notes symptoms and diagnoses, but does not raise a substantial question as to the correctness of OWCP's decision as it does not address the relevant issue of causal relationship of the diagnosed condition.¹⁴ Similarly, the July 13, 2017 EMG report does not address the cause of the diagnosed condition. Reports of from Dr. Palmaccio, such as his July 21, 2017 report, note a history of the employment injury and could be construed as providing support for causal relationship, but are insufficient to raise a substantial question as to the correctness of OWCP's decision. As noted, clear evidence of error is intended to represent a difficult standard and evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.¹⁵ The Board finds that this evidence does not rise to the level of clear evidence of error.

This evidence is insufficient to raise a substantial question as to the correctness of OWCP's decision and thus, these reports are insufficient to discharge appellant's burden of proof.

¹² 20 C.F.R. § 10.607(a).

¹³ *Id.* at § 10.607(a) (2011).

¹⁴ *F.R.*, Docket No. 09-0575 (issued January 4, 2010) (evidence that is not germane to the issue on which the claim was denied is insufficient to demonstrate clear evidence of error).

¹⁵ *Supra* note 10.

Consequently, OWCP properly found that appellant's August 9, 2017 request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

On appeal appellant argues the merits of her claim, contending that she still has left carpal tunnel syndrome and requires additional surgery. As previously noted, the Board does not have jurisdiction over the merits of the claim as appellant has not presented evidence or argument that raises a substantial question as to the correctness of OWCP's decision for which review is sought.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2018
Washington, DC

Christopher J. Godfrey, 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