

FACTUAL HISTORY

On July 31, 2015 appellant, then a 54-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging anxiety, depression, and mental anguish, which she attributed to “difficulty with sleeping, excessive crying, and just overall anxiety” due to her federal employment. She identified August 26, 2013 as the date that she first became aware of her condition. This was also the date appellant first realized that her condition was employment related. She stopped work on April 11, 2015 after filing her Form CA-2. Appellant later retired effective October 31, 2015.

Appellant submitted a July 31, 2015 narrative statement indicating that she was diagnosed with high blood pressure by her primary care physician, who then referred her to a psychiatrist for an evaluation. She alleged that she was verbally and emotionally assaulted at work, but she did not know why. Appellant stated that she was constantly exposed to intimidation, disrespect, belittlement, and harassment in the workplace, which resulted in her emotional condition. She contended that this was a deliberate movement in an effort to remove her from the station so that another coworker, B.W., could “move up” and get her out of “her business.” Appellant felt that she was in some type of competition with this coworker, but that she did not know for what. She stated that this had a severe impact on her mental status demonstrated by crying spells and sleepless nights.

In an August 4, 2015 development letter, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

In response appellant submitted a position description and a narrative statement dated August 24, 2015, further alleging that she was a victim of bullying by a coworker, D.H., who had perpetuated dating rumors and was monitoring her clock rings. She also believed that her coworkers were trying to kill another coworker, J.L., for his lottery winnings.

OWCP received two hospital reports dated September 1 and 4, 2015 diagnosing “headache” and “blood pressure,” as well as diagnostic testing results dated December 5, 2014 for a diagnosis of “chest pain.” It also received an April 8, 2015 report, regarding bilateral foot pain and planter fasciitis and an illegible medical report dated April 27, 2015.

In a December 15, 2014 report, Dr. A. Gene Hutcheson, appellant’s treating cardiologist, diagnosed benign essential hypertension, hyperlipidemia, chest pain, and palpitations. She asserted that appellant complained of chest tightness, which she thought was associated with gas or belching and also occurred with emotional stress.

In a generic unsigned note, Ridgewood Clinics in Jackson, Mississippi indicated that appellant was seen on August 17, 2015 and was released to work effective September 17, 2015.

In an August 31, 2015 report, an unidentifiable healthcare provider from Quinn Healthcare diagnosed hypertension, plantar fascial fibromatosis, and pain in joint involving ankle and foot and noted that appellant had a history of anxiety, hypertension, and high blood pressure.

In a September 25, 2015 letter, appellant’s manager indicated that appellant and D.H. were both called into a meeting and informed that she would listen in entirety to their situations.

Appellant was asked if she could tell her supervisor of an instance by date of what had occurred, but she would not provide any information. Her supervisor asked them if they could work together, as that there was no evidence of any harassment, and they both answered “yes.” Appellant’s supervisor further indicated that she was not asked about clock rings by appellant and that there was no discussion of J.L. or B.W. at any time during their discussion.

By decision dated October 1, 2015, OWCP denied appellant’s claim finding that the evidence of record was insufficient to establish any incidents of a hostile work environment or harassment occurring as alleged.

Subsequently, appellant submitted an illegible medical report dated April 27, 2015 and a September 18, 2015 report from Dr. Krishan Gupta, a psychiatrist, who indicated that appellant had stepped down from a Partial Hospitalization Program where she was being treated from September 18 to 25, 2015 and was admitted to the Intensive Outpatient Program at Brentwood Behavior Healthcare on September 28, 2015. Dr. Gupta reported that he was conducting weekly evaluations of appellant as to her progress and potential discharge date, noting that she had not yet been released to work.

On October 4, 2016 OWCP received appellant’s request for reconsideration. Appellant submitted a September 30, 2016 narrative statement reiterating her allegations that she developed an emotional condition due to a number of incidents that occurred in a hostile work environment.

By decision dated October 13, 2016, OWCP denied appellant’s request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error, finding that the evidence of record failed to establish any incidents of a hostile work environment or harassment.

LEGAL PRECEDENT

OWCP regulations provide that to be entitled to a merit review of an OWCP decision, 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

OWCP, however, may not deny an application for review solely because the application was untimely filed. It may consider an untimely application for reconsideration if the evidence or argument contained in the reconsideration request demonstrates clear evidence of error on the part of OWCP.⁴ In this regard, OWCP will conduct a limited review of how the newly submitted evidence bears on the prior evidence of record.⁵ Evidence that does not raise a substantial question concerning the correctness of OWCP’s decision is insufficient to demonstrate clear evidence of error.⁶

³ 20 C.F.R. § 10.607.

⁴ See *id.*, at § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁵ *Nelson T. Thompson*, 43 ECAB 919 (1992).

⁶ *Jimmy L. Day*, 48 ECAB 652 (1997).

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.⁷ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.⁸ 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.⁹

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.¹⁰

ANALYSIS

The Board finds that OWCP properly determined that appellant's request for reconsideration was untimely filed. OWCP's regulations¹¹ and procedures establish a one-year time limit for requesting reconsideration, which begins on the date of the original OWCP decision. 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.¹² The most recent merit decision was OWCP's October 1, 2015 decision. Appellant had one year from the date of this decision to make a timely request for reconsideration. Since her request was not received by OWCP until October 4, 2016, it was filed outside the one-year time period and was thus untimely. Consequently, appellant must demonstrate clear evidence of error by OWCP in the denial of her claim.¹³

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 October 1, 2015 decision or shift the weight of the evidence of record in her favor.

In support of her reconsideration request, appellant submitted a September 30, 2016 narrative statement, an illegible medical report dated April 27, 2015, and a September 18, 2015 report from Dr. Gupta. The term clear evidence of error is intended to represent a difficult standard.¹⁴ Even a detailed, well-rationalized medical report which would have created a conflict

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

⁸ *Leona N. Travis*, 43 ECAB 227, 240 (1991).

⁹ *Annie L. Billingsley*, 50 ECAB 210 (1998).

¹⁰ *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765 (1993).

¹¹ See 20 C.F.R. § 10.607(a); see *Alberta Dukes*, 56 ECAB 247 (2005).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016); see *C.B.*, Docket No. 13-1732 (issued January 28, 2014).

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

¹⁴ *Supra* note 12 at Chapter 2.1602.5 (October 2011); see *Dean D. Beets*, 43 ECAB 1153 (1992).

in medical opinion requiring further development if submitted prior to issuance of the denial decision, does not constitute clear evidence of error.¹⁵ It is not enough to show that evidence could be construed so as to produce a contrary conclusion. Instead, the evidence must shift the weight in appellant's favor.¹⁶ The new evidence does not show error with respect to OWCP's October 1, 2015 decision, which found that the employment exposure did not occur as alleged. The September 30, 2016 narrative statement from appellant lacks specific details about the actual work incidents alleged, such as particular dates, times, locations, and other facts surrounding the alleged incidents of harassment and discrimination. Therefore, it does not, on its face, show that OWCP erred when it denied her emotional condition claim.¹⁷ Moreover, the medical evidence is not relevant because the claim was not denied on a medical basis.¹⁸ Appellant's claim was denied because she failed to establish any compensable employment factors.¹⁹

The Board finds that the evidence appellant submitted 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 October 1, 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 as it was untimely filed and failed to demonstrate clear evidence of error.

¹⁵ See *D.G.*, 59 ECAB 455 (2008); *L.L.*, Docket No. 13-1624 (issued December 5, 2013).

¹⁶ See *M.N.*, Docket No. 15-0758 (issued July 6, 2015).

¹⁷ See *J.E.*, Docket No. 15-0131 (issued September 9, 2015).

¹⁸ *Id.*

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).

ORDER

IT IS HEREBY ORDERED THAT the October 13, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 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