



## 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 February 2, 2007 appellant, then a 47-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on March 28, 2006, she sustained a right knee injury when her supervisor bumped into her, causing her to stumble backwards.<sup>4</sup> She also alleged that a different supervisor shoved her hand into metal casing, causing her to injure her third right finger knuckle. Appellant did not stop work.

By letter dated February 7, 2007, the employing establishment controverted the claim and argued that appellant filed her Form CA-1 eight months after the alleged injury.

By development letter dated March 30, 2007, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised of the medical and factual evidence needed to establish her claim. OWCP afforded her 30 days to submit the necessary evidence.

In a March 9, 2007 narrative statement, appellant reported that on March 28, 2006 her supervisor came "barreling into her casing," causing her to stumble backwards and injure her right knee. She further reported that, on that same date, another supervisor "shoved" her hand into the metal casing, causing injury to her right finger. Appellant stated that she delayed seeking medical attention due to an illness and death of a family member.

In an April 5, 2007 narrative statement, appellant responded to OWCP development letter and reported that she delayed in filing her claim because she was unaware of the process, but had reported the injury to her supervisor.

In support of her claim, appellant also submitted medical reports dated July 31, 2006 through April 23, 2007.

By decision dated July 16, 2007, OWCP denied appellant's claim, finding that the evidence of record failed to establish that the March 28, 2006 employment incident occurred as alleged.

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<sup>4</sup> On July 1, 2006 appellant filed a Form CA-1 alleging a March 17, 2006 injury when a coworker shot rubber bands at her and almost knocked her down with his hamper. She also alleged discrimination and harassment, OWCP File No. xxxxxx736. This claim was denied by OWCP.

On February 2, 2007 appellant filed a Form CA-1 alleging that, on March 18, 2006, she sustained a left calf injury when a coworker shot her with four rubber bands, leaving marks on her left calf, OWCP File No. xxxxxx760. This claim was denied by OWCP.

On February 2, 2007 appellant filed another Form CA-1 alleging that, on June 8, 2006, she sustained an injury to her right knee when a coworker aggressively bumped his hamper into hers, OWCP File No. xxxxxx768. This claim was also denied by OWCP.

On July 30, 2007 appellant requested a hearing before an OWCP hearing representative.

In a statement received on July 27, 2007, appellant alleged that she was fraudulently fired after she complained of hostile work conditions on June 9, 2006. She alleged fraud on the part of her supervisors and noted an equal employment opportunity complaint had been filed. Appellant also discussed filing Form CA-2's for other work-related injuries.

Appellant submitted various narrative statements previously received addressing allegations of harassment and a hostile work environment, as well as medical reports dated April 23 and 26, and June 13, 2006.

A hearing was held on December 12, 2007 during which appellant reiterated her allegations surrounding the March 28, 2006 incident. She reported that she did not file a timely complaint because she feared for her job. Appellant further stated that her employment was terminated in June 2006 based on allegations that she mishandled mail, and she was fighting to get her job back. She further stated that she delayed filing a claim for benefits because she was unaware of her right to file a claim and her employer interfered with handling of the claim forms.

By decision dated January 30, 2008, an OWCP hearing representative affirmed the July 16, 2007 decision, finding that appellant failed to establish that the March 28, 2006 employment incident occurred as alleged. He noted that it could not accept fact of injury due to inconsistencies in the evidence casting serious doubt as to whether the specific event or incident occurred at the time, place, and in the manner alleged.<sup>5</sup>

By letter dated September 29, 2017, received by OWCP on October 2, 2017, appellant requested reconsideration. She argued that she was employed as a rural carrier from March 17 through June 8, 2006 and was assaulted and harassed, creating a hostile work environment. Appellant reported that she was fraudulently terminated after she complained of her hostile work environment. She noted that on March 18, 2006, she was harassed and injured when a coworker shot her with rubber bands. Appellant further reported that on March 28, 2006 she was almost knocked to the ground by her supervisor, causing her to stumble backwards. On that same date, another supervisor intentionally shoved her hand into the metal casing. Appellant reported that she was seeking reconsideration for her claims since all of her work-related injury claims had been denied. She alleged that she continued to suffer from pain and stiffness as a result of her work-related injury.

By decision dated October 25, 2017, OWCP denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

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<sup>5</sup> OWCP's hearing representative noted that appellant filed a loss of property report on November 28, 2006, eight months after the March 28, 2006 incident, which represented her first report of the alleged incident. Appellant did not file her Form CA-1 until February 2, 2007. The hearing representative further noted that the medical reports of record made no mention of a right knee injury until August 28, 2006 and made no mention of a right hand injury until November 15, 2006. He explained that there was no confirmation of the injury within the factual or medical documents contemporaneous to the injury, and that the claim was filed long after appellant's employment was terminated for reasons unrelated to the injury.

## LEGAL PRECEDENT

To be entitled to a merit review of OWCP's decision denying or terminating a benefit, a claimant must file his or her application for review within one year of the date of that decision.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation, if the claimant's application for review demonstrates clear evidence of error on the part of OWCP in its most recent merit decision. 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.<sup>9</sup>

To demonstrate clear evidence of error, 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.<sup>10</sup>

Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.<sup>11</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>12</sup> This entails a limited review by OWCP of the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.<sup>13</sup> The Board makes an independent determination as to whether a claimant has submitted clear evidence of error on the part of OWCP.<sup>14</sup>

## ANALYSIS

The Board finds that OWCP properly determined that appellant's request for reconsideration was untimely filed within the one-year time limitation period set forth in 20 C.F.R. § 10.607. The last merit decision of record in the present claim file was OWCP's January 30, 2008

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<sup>6</sup> 20 C.F.R. § 10.607(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (February 2016).

<sup>8</sup> 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

<sup>9</sup> 20 C.F.R. § 10.607(b); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

<sup>10</sup> *Annie L. Billingsley*, 50 ECAB 210 (1998).

<sup>11</sup> *Jimmy L. Day*, 48 ECAB 652 (1997).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Mathews*, 44 ECAB 765, 770 (1993).

decision. Appellant's request for reconsideration was received by OWCP on October 2, 2017. Since the reconsideration request was received more than one year after the January 30, 2008 merit decision, it was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in denying her claim.<sup>15</sup>

The Board further finds that appellant has failed to demonstrate clear evidence of error on the part of OWCP in issuing its September 30, 2008 decision.

OWCP denied appellant's claim as she had not established that the alleged incident occurred as alleged. In requesting reconsideration, appellant failed to submit any evidence other than her own statement which repeated her prior account of the March 28, 2006 employment incident.

Appellant failed to submit the type of positive, precise, and explicit evidence which manifests on its face that OWCP committed an error in its January 30, 2008 decision.<sup>16</sup> She failed to submit any evidence or argument to raise a substantial question concerning the correctness of OWCP's decision.<sup>17</sup> The Board notes that clear evidence of error is intended to represent a difficult standard.<sup>18</sup> In the instant case, appellant's statement requesting reconsideration is insufficient to establish that OWCP erred in its denial of her claim.<sup>19</sup>

Appellant did not submit the type of positive, precise, and explicit evidence that manifests on its face that OWCP committed an error.<sup>20</sup> Thus, she did not establish clear evidence of error in the denial of her traumatic injury claim.<sup>21</sup>

### **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.

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<sup>15</sup> See *Debra McDavid*, 57 ECAB 149 (2005).

<sup>16</sup> *G.B.*, Docket No. 13-1557 (issued October 29, 2013).

<sup>17</sup> *J.J.*, Docket No. 13-1363 (issued November 6, 2013).

<sup>18</sup> *Supra* note 7 at Chapter 2.1602.5 (February 2016).

<sup>19</sup> See *W.R.*, Docket No. 09-2336 (issued June 22, 2010).

<sup>20</sup> *J.T.*, Docket No. 10-0313 (issued February 24, 2010).

<sup>21</sup> *B.B.*, Docket No. 08-0232 (issued August 7, 2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 25, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 1, 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