



## **FACTUAL HISTORY**

On May 23, 2008 appellant, then a 25-year-old financial management analyst intern, filed a traumatic injury claim (Form CA-1) alleging that on October 9, 2007 she suffered a “[m]ental breakdown due to elevated stress levels” while at work.

By decision dated July 30, 2008, OWCP denied the claim because the factual evidence of record failed to establish that the October 9, 2007 incident occurred as alleged.

Appellant subsequently submitted medical evidence, including a hospital report dated October 10, 2007 from Dr. Nicole Davarpanah, a Board-certified internist, who diagnosed “bizarre behavior” likely secondary to new diagnosis of schizophrenia. Dr. Davarpanah reported that appellant had accepted a two-year internship at the White House and arrived in late June 2007. Appellant started to exhibit bizarre behavior, including periods of staring off into space, not responding to verbal stimuli, an inability to make decisions or answer questions, and a sense of detachment from her work and her family. Dr. Davarpanah noted that appellant had a family history of schizophrenia and was unable to provide a clear history of the events in the past three weeks, but reported that she had been under extreme stress at work.

In another October 10, 2007 hospital report, Dr. Thomas N. Jacob, a Board-certified psychiatrist, diagnosed major depressive disorder, nonpsychotic, and “[re]cent stress at job also loss in personal relationships.” He indicated that he did not think appellant was suffering from early-onset schizophrenia. Dr. Jacob asserted that within the past three weeks appellant had met someone on the Internet and then met him personally and realized that he was “no good.” Appellant then met a bus driver who also turned out to be a “bad person.” Additionally, she had some trouble with her assignments and some difficulties with managing her business credit card.

On August 11, 2008 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

Appellant requested to withdraw her request for an oral hearing in a November 12, 2008 telephone call.

By decision dated November 12, 2008, OWCP notified appellant that it had accepted her request for withdrawal of the hearing.

On September 19, 2017 appellant requested reconsideration and reiterated the factual history of her claim.

In an October 19, 2017 letter, appellant stated that “her grandmother had died, her parents were not able to take her to a court hearing in Atlanta, her initial diagnosis by a psychiatrist was in October 2007, and her final diagnosis had been determined to be ‘bipolar disorder, mood disorder.’” She indicated that she was still currently seeking medicinal and psychotherapy treatment for post-traumatic stress disorder (PTSD), depression, paranoia, insomnia, bipolar disorder, and anger management.

Appellant further submitted a medical note dated October 14, 2017 indicating that she had been prescribed with medications and was to return to the emergency room for new or worse problems.

By decision dated November 6, 2017, OWCP denied appellant's request for reconsideration because it was untimely filed and failed to demonstrate clear evidence of error, finding that the evidence submitted was irrelevant to the issue of fact of injury.

### **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, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>4</sup> One such limitation provides that an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.<sup>5</sup> 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).<sup>6</sup>

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.<sup>7</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by OWCP.<sup>8</sup> The evidence must be positive, precise, and explicit and must be manifest on its face that OWCP committed an error.<sup>9</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>10</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>11</sup> 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.<sup>12</sup>

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<sup>3</sup> See *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>4</sup> See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

<sup>5</sup> 20 C.F.R. § 10.607(a).

<sup>6</sup> See *Jesus D. Sanchez*, *supra* note 3; *F.R.*, Docket No. 09-0575 (issued January 4, 2010).

<sup>7</sup> 20 C.F.R. § 10.607(b).

<sup>8</sup> See *Nancy Marcano*, 50 ECAB 110, 114 (1998); *Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

<sup>9</sup> See *Fidel E. Perez*, 48 ECAB 663, 665 (1997); *M.L.*, Docket No. 09-0956 (issued April 15, 2010).

<sup>10</sup> See *Richard L. Rhodes*, 50 ECAB 259, 264 (1999).

<sup>11</sup> See *Leona N. Travis*, 43 ECAB 227, 241 (1991).

<sup>12</sup> See *Jimmy L. Day*, 48 ECAB 652 (1997); *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

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.<sup>13</sup> The Board makes an independent determination of whether a claimant has demonstrated 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.<sup>14</sup>

### 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 limit for requesting reconsideration, which begins on the date of the original OWCP decision.<sup>15</sup> 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 the Integrated Federal Employees' Compensation System (iFECS).<sup>16</sup> The most recent merit decision was OWCP's July 30, 2008 decision denying appellant's traumatic injury claim. Appellant had one year from the date of this decision to make a timely request for reconsideration. Since appellant's request was not received into iFECS by OWCP until September 19, 2017, it was filed outside the one-year time period.<sup>17</sup> As appellant's September 19, 2017 request for reconsideration was received more than one year after issuance of the July 30, 2008 merit decision, it was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in the denial of her claim.<sup>18</sup>

In support of her reconsideration request, appellant submitted two narrative statements dated September 14 and October 19, 2017 and a medical note dated October 14, 2017. The term clear evidence of error is intended to represent a difficult standard.<sup>19</sup> Even a detailed, well-rationalized medical report which would have created a conflict in medical opinion requiring

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<sup>13</sup> See *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

<sup>14</sup> See *Pete F. Dorso*, 52 ECAB 424 (2001); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

<sup>15</sup> 20 C.F.R. § 10.607(a); see *Alberta Dukes*, 56 ECAB 247 (2005).

<sup>16</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016); see *Veletta C. Coleman*, *supra* note 13.

<sup>17</sup> OWCP's procedures were changed effective August 29, 2011. Section 10.607 of the new regulations provides that the date of the reconsideration request for timeliness purposes was changed from the date the request was mailed to the date the request was received by OWCP. See 20 C.F.R. § 10.607 (2011); see also *C.B.*, Docket No. 13-1732 (issued January 28, 2014) (where the Board 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). Therefore, OWCP utilized the new regulations and found that as OWCP received appellant's request for reconsideration on September 19, 2017, or over one year after the July 30, 2008 decision, appellant's request was untimely filed.

<sup>18</sup> 20 C.F.R. § 10.607(b); see *Debra McDavid*, 57 ECAB 149 (2005).

<sup>19</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5.a (February 2016); see *Dean D. Beets*, *supra* note 8.

further development if submitted prior to issuance of the denial decision, does not constitute clear evidence of error.<sup>20</sup> 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.<sup>21</sup> The narrative statements reiterate the factual history previously of record and the medical note fails to address the alleged October 9, 2007 work incident. Thus, the Board finds that this evidence does not demonstrate error with respect to OWCP's July 30, 2008 decision, which found that the October 9, 2007 employment incident did not occur as alleged.<sup>22</sup> Moreover, the Board has held that repetitive or cumulative evidence is insufficient to shift the weight of the evidence in favor of the claimant.<sup>23</sup> Appellant has not sufficiently explained how the submission of this evidence raises a substantial question concerning the correctness of OWCP's decision.

Additionally, the Board notes that appellant previously submitted medical evidence, including two reports dated October 10, 2007 from Dr. Davarpanah and Dr. Jacob. The Board finds that this evidence fails to address the October 9, 2007 work incident and, thus, fails to demonstrate clear evidence of error because it does not show that OWCP committed an error in denying appellant's traumatic injury claim, nor raise a substantial question as to the correctness of OWCP's decision.

To demonstrate clear evidence of error, it is insufficient 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.<sup>24</sup> None of the evidence submitted manifests on its face that OWCP committed an error in denying appellant's traumatic injury claim. Appellant has not otherwise submitted evidence of sufficient probative value to raise a substantial question as to the correctness of OWCP's decision. Thus, the evidence is insufficient to demonstrate clear evidence of error.

### **CONCLUSION**

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

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<sup>20</sup> See *D.G.*, 59 ECAB 455 (2008); *L.L.*, Docket No. 13-1624 (issued December 5, 2013).

<sup>21</sup> See *M.N.*, Docket No. 15-0758 (issued July 6, 2015).

<sup>22</sup> See also *L.M.*, Docket No. 14-1738 (issued March 3, 2015) (where the claimant resubmitted medical reports previously of record, the Board found that the evidence was duplicative and failed to demonstrate clear evidence of error).

<sup>23</sup> See *D.E.*, 59 ECAB 438 (2008); *A.F.*, Docket No. 11-1297 (issued December 20, 2011).

<sup>24</sup> *Supra* note 19.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 6, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 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