

**United States Department of Labor
Employees' Compensation Appeals Board**

A.A., Appellant)	
)	
and)	Docket No. 19-1219
)	Issued: December 10, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Milwaukee, WI, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 6, 2019 appellant filed a timely appeal from a February 14, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated July 13, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP properly denied appellant's October 2, 2018 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On February 1, 2017 appellant, then a 24-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he injured his nose when he tripped on a pallet and fell while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that he stopped work on the date of injury and had not returned.

In an unsigned report dated February 1, 2017, Dr. Jillian L. Theobald, an emergency medicine specialist, diagnosed nasal fracture. In a work status report of the same date, Michelle F. Strait, a physician assistant, noted that appellant could return to work on February 2, 2017, full time with restrictions.

In a development letter dated May 30, 2017, OWCP advised appellant that when his claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work and it administratively approved payment of a limited amount of medical expenses. It noted that his claim had been reopened for consideration because it received an inquiry regarding bill payment issues. OWCP informed appellant of the deficiencies of his claim and requested additional medical evidence in support of his claim. It afforded him 30 days to submit the necessary evidence.

By decision dated July 13, 2017, OWCP denied appellant's claim finding that he had not submitted medical evidence containing a diagnosis by a qualified physician in connection with the accepted February 1, 2017 employment incident.

OWCP subsequently received a report dated January 21, 2019, wherein Dr. Tara M. Kennedy, a family medicine specialist, noted that appellant reported no residual symptoms from his broken nose. Dr. Kennedy indicated that appellant was present to address the deficiencies of his traumatic injury claim.

On February 12, 2019 appellant requested reconsideration of OWCP's July 13, 2017 decision.

In a letter dated January 28, 2019, Dr. Kennedy indicated that appellant sustained a closed fracture of his nasal bones on February 1, 2017 when he fell while at work. She noted that the fracture was immediately reset on that date and he has encountered no residual symptoms.

In an duty status report (Form CA-17) dated February 1, 2019, the physician, who was an ear, nose, and throat specialist, and whose signature is illegible, diagnosed nasal bone fracture and indicated that appellant tripped and broke his nose when it struck work equipment.

By decision dated February 14, 2019, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.³ This discretionary authority, however, is subject to certain restrictions. For instance, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.⁴ 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 (iFECS).⁵ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁶

OWCP may not deny a reconsideration request solely because it was untimely filed. When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error.⁷ If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review.⁸

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.⁹ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.¹⁰ Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹¹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹² 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.¹³ To demonstrate clear evidence of error, the evidence submitted must be of sufficient probative value to shift the weight of the

³ 5 U.S.C. § 8128(a); *see M.E.*, Docket No. 18-1497 (issued March 1, 2019); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁴ 20 C.F.R. § 10.607(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

⁶ *See M.E.*, *supra* note 3; *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁷ *See* 20 C.F.R. § 10.607(b); *M.E.*, *supra* note 3; *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁸ *G.G.*, Docket No. 18-1074 (issued January 7, 2019); *see also id.* at § 10.607(b); *supra* note 5 at Chapter 2.1602.5 (February 2016).

⁹ *J.F.*, Docket No. 18-1802 (issued May 20, 2019); *J.D.*, Docket No. 16-1767 (issued January 12, 2017); *see Dean D. Beets*, 43 ECAB 1153 (1992).

¹⁰ *Id.*; *see also Leona N. Travis*, 43 ECAB 227 (1999).

¹¹ *J.F.*, *supra* note 9; *J.D.*, *supra* note 9; *Jimmy L. Day*, 48 ECAB 652 (1997).

¹² *Id.*

¹³ *Id.*

evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.¹⁴

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁵ The claimant must present evidence which on its face shows that OWCP made an error. 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.¹⁶ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁷

ANALYSIS

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.

OWCP's regulations¹⁸ and procedures¹⁹ establish a one-year time limitation for requesting reconsideration, which begins on the date of the last OWCP merit decision. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.²⁰ The most recent merit decision was OWCP's July 13, 2017 decision. As appellant's request for reconsideration was not received by OWCP until February 12, 2019, more than one year after the July 13, 2017 decision, the Board finds that it was untimely filed. Because his request was untimely, he must demonstrate clear evidence of error on the part of OWCP in having denied his traumatic injury claim.

The Board further finds that appellant has failed to demonstrate clear evidence of error on the part of OWCP in its last merit decision. OWCP denied his traumatic injury claim, finding that he had not submitted medical evidence that established causal relationship between a diagnosed medical condition and the accepted February 1, 2017 employment incident.

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

¹⁴ *J.F.*, *supra* note 9; *M.E.*, *supra* note 3; *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁵ *See G.G.*, *supra* note 8.

¹⁶ *J.F.*, *supra* note 9; *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 5 at Chapter 2.1602.5(a) (February 2016).

¹⁷ *See M.E.*, *supra* note 3; *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹⁸ *S.C.*, Docket No. 18-0126 (issued May 14, 2019); *J.W.*, *supra* note 3; 20 C.F.R. § 10.607(a); *see Alberta Dukes*, 56 ECAB 247 (2005).

¹⁹ *Supra* note 5 at Chapter 2.1602.4 (February 2016); *see S.C.*, *id.*; *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

²⁰ 20 C.F.R. § 10.607(b); *see S.C.*, *supra* note 18; *Debra McDavid*, 57 ECAB 149 (2005).

evidence of error.²¹ In his request for reconsideration, appellant submitted a report from Dr. Kennedy dated January 21, 2019, a letter from her dated January 28, 2019, and an illegibly-signed Form CA-17 dated February 1, 2019. This evidence does not show that OWCP erred in its July 13, 2017 decision at the time that it was issued. While Dr. Kennedy's report did provide a diagnosis, as previously noted, 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, does not demonstrate clear evidence of error.²² The illegibly signed Form CA-17 is of no probative value and therefore does not demonstrate clear evidence of error.

Clear evidence of error is intended to represent a difficult standard. The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP.²³ As appellant has not submitted such evidence, the Board finds that he has not demonstrated clear evidence of error.

CONCLUSION

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

²¹ *Supra* note 14.

²² *J.F.*, *supra* note 9; *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 5 at Chapter 2.1602.5(a) (February 2016).

²³ *Supra* note 17.

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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