

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

This case has previously been before the Board.⁴ The facts of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 3, 2013 appellant, then a 43-year-old administrative specialist, filed an occupational disease claim (Form CA-2) alleging that she sustained work-related emotional conditions in the form of depression, anxiety disorder, panic attacks, and panic disorder. She indicated that, on August 22, 2013, she first became aware of her claimed condition and that it was caused or aggravated by her federal employment. Appellant stopped work on August 22, 2013.

In a December 5, 2013 statement, appellant indicated that on August 22, 2013 she informed her supervisor of a decline in her health and ability to concentrate due to stress and pressure caused by an upcoming move to a new workplace approximately eight or nine miles away from her then-current workplace. She advised that she stopped work beginning August 22, 2013 and felt that she was treated harshly after she sent an e-mail to her supervisor on August 27, 2013 about possibly returning to work. Appellant indicated that she believed that her supervisor was "continuing to intimidate me" and "added insult to my injuries" when he responded, "Facilities has moved your boxes and chair to [Building 198] and installed the keyboard tray as previously requested." She asserted that she was psychologically mistreated and abused "all because of the demands of a move." Appellant claimed that she had been called "a squatter" and noted, "I have been abused psychologically and I have been lied to and lied on and my chain of command failed me." She also submitted medical evidence in support of her claim. Some of the reports indicated that appellant suffered from depression, anxiety, and panic attacks.

By a February 12, 2014 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

In response, appellant submitted a statement in which she indicated that between January and August 2013 she experienced a lot of stress because her work team was transitioning from contractors to government workers. She claimed that her work unit was not adequately supported by management in the performance of her work during this transition period. Appellant asserted that on June 24, 2013 she advised another supervisor, that she was not ready to move to Building 198. She claimed that this supervisor gave her assurances that she would not have to move until she was ready to make such a move. Appellant indicated that she suffered a great deal of stress because she was told by her supervisor in an August 22, 2013 e-mail that she would have to vacate her workspace by the close of business on August 23, 2013.

Appellant submitted a number of documents, including copies of e-mails, concerning the move of her and coworkers to Building 198. In several of the documents, she indicated that she

⁴ Docket No. 14-1936 (issued July 27, 2015).

wished to postpone her move to Building 198 until issues were resolved regarding her ability to effectively and efficiently perform her job duties at the new location.⁵ In an August 12, 2013 e-mail, appellant's supervisor advised that appellant "is currently squatting in Building 3112, cube 20."⁶ Appellant also submitted additional medical evidence in support of her claim.

By decision dated March 19, 2014, OWCP denied appellant's emotional condition claim, finding that she failed to establish a compensable employment factor. In particular, it found that her allegation regarding the employing establishment's mishandling of her move to Building 198 in August 2013 did not constitute error and abuse. OWCP also determined that appellant failed to establish that she was subjected to harassment.

On April 25, 2014 appellant requested reconsideration of OWCP's March 19, 2014 decision. She submitted additional evidence including several statements in which she continued to argue that the employing establishment mishandled her move to Building 198 in August 2013. By decision dated May 7, 2014, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On June 24, 2014 appellant again requested reconsideration of her claim. She submitted additional personal statements and documents regarding the move to Building 198 in August 2013.

On July 17, 2014 OWCP received an undated statement from appellant's supervisor which addressed her claimed employment factors. The supervisor noted that appellant rejected two requests to move in June and July 2013 and that these were cancelled in an effort to accommodate her. On August 2, 2013 it was discovered that her cubicle was assigned to two individuals and a proper request to vacate was issued on August 12, 2013 after a new employee showed up to occupy the same space. The supervisor indicated that appellant made little progress towards carrying out the move and noted that he issued her a final request to move on August 22, 2013. The move did not require special computer server or access requirements, and the "Carpathia" server was available from the contractor's site. The supervisor noted that the term "squatting" was administrative in nature, and was used to denote a person working in a cubicle not officially assigned to him or her or occupying a space marked vacant. The term was not used only for appellant and was not meant to be an insult.

By decision dated August 29, 2014, OWCP denied modification of its March 19, 2014 decision. It again found that appellant had not established a compensable employment factor in connection with her emotional condition claim.

⁵ Appellant asserted that Building 198 did not have adequate space for the multiple conferences she attended per week and that she would not be able to print and transfer files in an efficient manner at Building 198.

⁶ In an August 22, 2013 e-mail to appellant, her supervisor noted, "You need to be moved by [close of business] today then."

Appellant subsequently appealed to the Board and, by decision dated July 27, 2015, the Board affirmed OWCP's August 29, 2014 decision denying her emotional condition claim, finding that she had not established a compensable employment factor.⁷

On April 29, 2016 appellant again requested reconsideration of her claim and submitted additional factual and medical evidence in support of her reconsideration request. By decision dated May 18, 2016, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

In July 24 and August 22, 2016 letters received by OWCP on August 22, 2016, appellant again requested reconsideration of her claim. In the July 24, 2016 letter, she requested that an OWCP claims examiner "carefully review my last reconsideration." In the August 22, 2016 letter, appellant asserted that it was difficult for her to complete the forms for her claim due to memory and concentration issues which were related to her work. She advised that she had received psychiatric care on a regular basis since August 2013 and indicated that her attending physicians had requested that OWCP carefully review her requests for reimbursement. Appellant noted that some of her requests for reimbursement of co-payments were related to treatment for psychiatric conditions.⁸ She submitted an OWCP document listing medical bills that had been denied for reimbursement.

By decision dated November 20, 2017, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application. The Secretary, in accordance with the facts found on review, may end, decrease or increase the compensation awarded or award compensation previously refused or discontinued.⁹

OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, 20 C.F.R. § 10.607(a) of the implementing regulations provides that an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.¹⁰ According to the Federal (FECA) Procedure Manual, the one-year period for requesting reconsideration begins on the date of the original OWCP decision, but the right to reconsideration within one year also accompanies any

⁷ *Supra* note 3.

⁸ Appellant also noted that she did not understand why OWCP denied her request for reimbursement of co-payments and travel expenses which were made in connection with an OWCP claim other than the present claim.

⁹ 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.607(a).

subsequent merit decision on the issues, including any merit decision by the Board.¹¹ Timeliness is determined by the document receipt date, *i.e.*, the “received date” in OWCP’s Integrated Federal Employees’ Compensation System (iFECS).¹² 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.¹³

However, 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 that was decided by OWCP. The evidence must be positive, precise, and explicit and must be manifest on its face that OWCP committed an error.¹⁴

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.¹⁵ The Board notes that clear evidence of error is intended to represent a difficult standard.¹⁶ Evidence that does not raise a substantial question concerning the correctness of OWCP’s decision is insufficient to demonstrate clear evidence of error.¹⁷ It is not enough merely to establish that the evidence could be construed so as to produce a contrary conclusion.¹⁸ 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.¹⁹ The Board makes an independent determination as to whether a claimant has demonstrated clear evidence of error on the part of OWCP.²⁰

ANALYSIS

The Board finds that OWCP properly determined that appellant failed to file a timely request for reconsideration. As noted above, the one-year period for requesting reconsideration begins on the date of the original OWCP decision, but the right to reconsideration within one year

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4a (February 2016).

¹² *Id.* at Chapter 2.1602.4b (February 2016).

¹³ *See M.P.*, Docket No. 17-0367 (issued March 12, 2018); *Thankamma Mathews*, 44 ECAB 765 (1993).

¹⁴ *Id.* at § 10.607(b); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

¹⁵ *Annie L. Billingsley*, 50 ECAB 210 (1998).

¹⁶ *R.K.*, Docket No. 16-0355 (issued June 27, 2016).

¹⁷ *Jimmy L. Day*, 48 ECAB 652 (1997).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Mathews*, *supra* note 13.

also accompanies any subsequent merit decision on the issues, including any merit decision by the Board.²¹ As appellant's request for reconsideration was not received by OWCP until August 22, 2016, more than one year after issuance of the Board's July 27, 2015 merit decision, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in its prior merit decision.²²

Appellant failed to demonstrate clear evidence of error on the part of OWCP in issuing its prior merit decision dated August 29, 2014. In an August 22, 2017 letter, she asserted that it was difficult for her to complete the forms for her claim due to memory and concentration issues which were related to her work. Appellant advised that she had received psychiatric care on a regular basis since August 2013 and indicated that her attending physicians had requested that OWCP carefully review her requests for reimbursement. She noted that some of her requests for reimbursement of co-payments were related to treatment for psychiatric conditions.

Appellant failed to submit the type of positive, precise, and explicit evidence which manifests on its face that OWCP committed an error in its August 29, 2014 decision denying her claim for an employment-related emotional condition.²³ The evidence and argument submitted in connection with her untimely reconsideration request did not raise a substantial question concerning the correctness of OWCP's prior decision.²⁴ In essence, appellant simply expressed her personal belief that she was due compensation for an employment-related emotional condition. However, she failed to submit evidence or argument demonstrating that OWCP committed error when it previously denied her emotional condition claim. In an August 22, 2017 letter, appellant had noted that she did not understand why OWCP denied her request for reimbursement of co-payments and travel expenses which were made in connection with an OWCP claim other than the present claim. She failed to explain how her statements regarding a claim unrelated to the present claim showed error in OWCP's prior decisions regarding her claim for an employment-related emotional condition. Appellant also submitted an OWCP document listing medical bills that had been denied for reimbursement, but this document would in any way show that she sustained an employment-related emotional condition. OWCP had denied appellant's emotional condition claim because she failed to establish compensable employment factors, but appellant's argument upon her untimely reconsideration request did not address this factual basis for the denial of her claim.²⁵

The Board finds that appellant's application for review does not demonstrate on its face that OWCP committed error when it found in its August 29, 2014 decision that she failed to meet her burden of proof to establish an employment-related emotional condition.²⁶ As noted, clear

²¹ See *supra* notes 8 and 9.

²² See *supra* note 10.

²³ *Id.* See also *M.M.*, Docket No. 18-0622 (issued October 2, 2018).

²⁴ See *supra* notes 11 and 13.

²⁵ See *supra* notes 18 through 20 regarding a claimant's need to establish a compensable employment factor in connection with a claim for an employment-related emotional condition.

²⁶ See *S.F.*, Docket No. 09-0270 (issued August 26, 2009).

evidence of error is intended to represent a difficult standard.²⁷ Other than simply reiterating her previous arguments, appellant has not met this standard in this case.

For these reasons, the evidence and argument submitted by appellant does not raise a substantial question concerning the correctness of OWCP's August 29, 2014 decision and OWCP properly determined that appellant failed to demonstrate clear evidence of error in that decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

²⁷ See *supra* note 12.