

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

S.T., Appellant)	
)	
and)	Docket No. 18-0925
)	Issued: June 11, 2019
U.S. POSTAL SERVICE, NORTH TEXAS)	
PROCESSING & DISTRIBUTION CENTER,)	
Coppell, TX, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 2, 2018 appellant filed a timely appeal from a March 16, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated October 20, 2014, 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 over the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 3, 2014 appellant, then a 49-year-old automation clerk, filed an occupational disease claim (Form CA-2) for carpal tunnel syndrome (CTS). She indicated that she first became aware of her condition on July 1, 2014 and realized it was related to factors of her federal employment on July 17, 2014. On the portion of the claim form that requested an explanation of the relationship between her employment and the claimed condition appellant described her symptoms and identified objective studies that she believed supported a diagnosis of CTS. On the reverse side of the claim form the employing establishment indicated that appellant had not stopped working and there were no changes to her work assignment.

A July 1, 2014 bilateral upper extremity electromyography and nerve conduction velocity (EMG/NCV) study revealed evidence of bilateral carpal tunnel syndrome which was severe on the right side and moderate on the left side. There was no evidence of cervical radiculopathy, plexopathy, or neuropathy. However, there was evidence of spasm in the cervical paraspinal.

In a development letter dated September 17, 2014, OWCP acknowledged receipt of appellant's claim and informed her that additional evidence was necessary to establish her claim. It requested that she respond to an attached questionnaire in order to substantiate the factual element of her claim. OWCP also requested medical evidence to establish a diagnosed medical condition causally related to her federal employment. It afforded appellant 30 days to provide the requested information.

In a July 17, 2014 report, Dr. Ronnie D. Shade, a Board-certified orthopedic surgeon, indicated that appellant had been employed for 22 years as an automation clerk. Appellant's duties consisted of pushing all-purpose containers (APC) weighing up to 1,100 pounds, repetitive lifting and grasping, moving back and forth, twisting to swipe mail, bending, and stooping. She reported that she performed these duties repetitively on a daily basis and that her bilateral wrist pain had progressed over a period of time. Dr. Shade related appellant's complaints of pain, numbness, tingling sensation, and stiffness radiating into the left forearm/elbow. He noted that the July 1, 2014 EMG/NCV results revealed bilateral CTS and evidence of spasms in the cervical paraspinals. Dr. Shade diagnosed bilateral CTS, bilateral thumb tenosynovitis (trigger finger), and left cubital tunnel syndrome. He reported that he had reviewed the physical requirements of an automation clerk. Dr. Shade opined that appellant's "complaints and diagnoses are directly related to the compensable injury for the date of [July 1, 2014]." He explained that appellant's injuries were caused by pushing APC's that weigh up to 1,100 pounds, repetitive lifting and grasping, moving back and forth, twisting to swipe mail, bending, and stooping. Dr. Shade reported that appellant's mechanism of injury was directly causally related to the injury that appellant sustained.

By decision dated October 20, 2014, OWCP denied appellant's claim finding that she had not met her burden of proof to establish the factual component of fact of injury. It noted that appellant had not responded to its September 17, 2014 factual questionnaire regarding the specific employment duties she believed caused or contributed to her condition. OWCP concluded, therefore, that he had not met the requirements to establish an injury as defined by FECA.

Additional medical evidence was submitted after OWCP's October 20, 2014 denial decision. In reports dated November 7, 2014 to January 7, 2015, Dr. Shade related that appellant

continued to experience numbness and a tingling sensation in her bilateral hands and wrists in addition to pain, numbness, and a tingling sensation in her left elbow. He also noted appellant's complaint of left knee pain as a result of constant twisting while moving 15- to 20-pound trays. Dr. Shade reported examination findings of tenderness upon manual palpation of the left knee and reviewed diagnostic testing results. He diagnosed bilateral CTS, tenosynovitis of the bilateral thumbs, left cubital tunnel syndrome, left elbow mild bursitis, chondromalacia of left knee patella, and left knee osteoarthritis. Dr. Shade noted that appellant was incapacitated from work beginning December 3, 2014.

No additional evidence was submitted into the record until 2017.

OWCP received a September 5, 2017 work status note by Dr. Shade who indicated that appellant could return to full duty on September 5, 2017.

On September 8, 2017 appellant filed a notice of recurrence (Form CA-2a) alleging that on August 31, 2017 she sustained a recurrence of her claimed July 1, 2014 employment injury. She related that the recurrence occurred when lifting trays from pallets weighing up to 25 pounds and loading them on the ledge. Appellant stopped work on September 1, 2017 and returned on September 2, 2017.

In a letter dated September 18, 2017, OWCP informed appellant that it could not consider a recurrence on a denied claim. It advised her that no further action would be taken concerning her claim.

OWCP received a Family and Medical Leave Act (FMLA) certification form dated September 20, 2017. Appellant noted a date of injury of July 1, 2014. She reported diagnoses of bilateral CTS, tenosynovitis of the bilateral thumbs, bilateral cubital tunnel syndrome, and left elbow bursitis.

Additional medical reports from Dr. Shade were submitted. In an October 16, 2017 report, Dr. Shade related that he examined appellant for a work injury to the bilateral wrists on July 1, 2014. He indicated that appellant was employed as an automation clerk and described her repetitive duties. Dr. Shade noted that appellant complained of pain, numbness, tingling sensation, and stiffness radiating into the left forearm/elbow and pain associated with grasping objects. He diagnosed bilateral CTS, tenosynovitis of the bilateral trigger fingers, and left cubital tunnel syndrome. Dr. Shade opined that appellant's injuries were caused by pushing APC's that weigh up to 1,100 pounds, repetitive lifting and grasping, moving back and forth, twisting to swipe mail, bending, and stooping.

In a February 5, 2018 report, Dr. Shade noted appellant's continued symptoms of her bilateral hands and wrists, left elbow, and left knee. He related that appellant had worked as a mail processing clerk since 1991 and described her employment duties. Neurological examination showed altered gait due to pain. Dr. Shade diagnosed bilateral carpal tunnel syndrome, tenosynovitis of the bilateral thumbs, left elbow mild bursitis, left knee chondromalacia, and osteoarthritis of the left knee.

According to a Form CA-110 memorandum of a phone bank call dated February 12, 2018, OWCP advised appellant to exercise the appeal rights provided with the October 20, 2014

decision. It sent appellant a copy of the October 20, 2014 OWCP decision with attached appeal rights.

On March 2, 2018 appellant requested reconsideration. She explained that, since her injury on July 1, 2014, she had worked full duty, 10 to 12 hours a day, since and before April 1991. Appellant asserted that all of her duties consisted of her doing repetitive movement on a daily basis for almost 28 years. She resubmitted Dr. Shade's October 16 and November 17, 2017 and February 5, 2018 reports.

By decision dated March 16, 2018, OWCP denied appellant's reconsideration request as it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.² OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.³ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁴ Timeliness is determined by the document receipt date of the request for reconsideration as is indicated by the "received date" in the integrated Federal Employees' Compensation System (iFECS).⁵ OWCP will consider an untimely request for reconsideration only if the request demonstrates clear evidence of error on the part of OWCP in its most recent decision.⁶ The request must establish on its face that such decision was erroneous.⁷ Where a request is untimely and fails to demonstrate clear evidence of error, OWCP will deny the request for reconsideration without reopening the case for a review of the merits.⁸

OWCP, however, may not deny an application for reconsideration 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.⁹ In this regard, OWCP will conduct a limited review of how the newly

² This section provides in pertinent part: the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.607.

⁴ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

⁵ *Id.* at Chapter 2.1602.4(b).

⁶ 20 C.F.R. § 10.607(b).

⁷ *Id.*

⁸ *Id.* at § 10.608(b).

⁹ *See* 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

submitted evidence bears on the prior evidence of record.¹⁰ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹¹

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.¹² It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹³ The evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or demonstrate 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.¹⁴ The Board has held that even a report such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical evidence requiring further development is insufficient to demonstrate clear evidence of error.¹⁵ OWCP procedures further provide that the term clear evidence of error is intended to represent a difficult standard.¹⁶ If clear evidence of error has not been presented, OWCP should deny the application by letter decision, which includes a brief evaluation of the evidence submitted and a finding made that clear evidence of error has not been shown.¹⁷

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.¹⁸

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 regulations establish a one-year time limit for requesting reconsideration, which begins on the date of the original merit decision. The most recent merit decision was OWCP's October 20, 2014 decision, which denied appellant's occupational disease claim. OWCP received her request for reconsideration on March 2, 2018, which was outside the one-year time limit.

¹⁰ See *id.*; *Nelson T. Thompson*, 43 ECAB 919 (1992).

¹¹ *Jimmy L. Day*, 48 ECAB 652 (1997).

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

¹³ See *Leona N. Travis*, 43 ECAB 227, 240 (1991).

¹⁴ *Annie L. Billingsley*, 50 ECAB 210 (1998).

¹⁵ *A.R.*, Docket No. 15-1598 (issued December 7, 2015).

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsideration*, Chapter 2.1602.5a (October 2011).

¹⁷ *Id.*

¹⁸ *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

Consequently, appellant must demonstrate clear evidence of error by OWCP in denying her claim for compensation.¹⁹

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 20, 2014 merit decision or shift the weight of the evidence of record in her favor.

In support of her reconsideration request, appellant submitted medical reports by Dr. Shade dated November 7, 2014 to February 5, 2018 regarding her treatment for diagnosed bilateral CTS, tenosynovitis of the bilateral thumbs, left cubital tunnel syndrome, left elbow mild bursitis, chondromalacia of left knee patella, and left knee osteoarthritis. Dr. Shade noted that appellant worked as an automation clerk and described his employment duties. He reiterated his previous opinion that appellant's injuries were causally related to the repetitive duties of her employment. These medical reports, however, are repetitive and substantially similar to Dr. Shade's July 17, 2014 report, previously of record, and does not show error with respect to the October 20, 2014 decision.²⁰ The Board has held that repetitive or cumulative evidence is insufficient to shift the weight of the evidence in favor of the claimant.²¹

Appellant also submitted a statement explaining that she worked 10 to 12 hours a day since April 1991 and that her job required repetitive movement on a daily basis. The new evidence does not show error with respect to OWCP's October 20, 2014 merit decision, which found that the evidence submitted was insufficient to establish fact of injury. Appellant has not explained how the submission of this evidence raises a substantial question concerning the correctness of OWCP's decision. Her claim was denied because she failed to establish her employment factors. Therefore, this evidence does not, on its face, show that OWCP erred when it denied her occupational disease claim.²²

The Board finds that the evidence appellant submitted on reconsideration is insufficient to shift the weight of the evidence in favor of her claim or raise a substantial question that OWCP erred in its October 20, 2014 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.

¹⁹ *Supra* note 6.

²⁰ *See L.M.*, Docket No. 14-1738 (issued March 2015).

²¹ *See D.E.*, 59 ECAB 438 (2008); *see also A.F.*, Docket No. 11-1297 (issued December 20, 2011).

²² *See J.E.*, Docket No. 15-0131 (issued September 9, 2015).

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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