

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

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B.C., Appellant)	
)	
and)	Docket No. 18-1496
)	Issued: May 22, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Chicago, IL, Employer)	
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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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 31, 2018 appellant filed a timely appeal from a July 12, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The most recent merit decision was a Board decision dated May 9, 2008, which became final 30 days after issuance, and is not subject to further review.¹ As there was no merit decision by OWCP within one year of the filing of this

¹ 20 C.F.R. § 501.6(d); *see J.P.*, Docket No. 17-0053 (issued May 23, 2017); *R.M.*, Docket No. 14-1213 (issued October 15, 2014).

appeal,² pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.⁴

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.⁵ The facts and circumstances of the case as set forth in the Board's prior decisions and orders are incorporated herein by reference. The relevant facts are as follows.

On May 7, 1985 appellant, then a 28-year-old letter sorter machine operator, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained ankle, left hip, and left neck injuries when she slipped down a flight of stairs while in the performance of duty. OWCP assigned the present claim OWCP File No. xxxxxx086 and accepted cervical, lumbar, left hip, and left ankle strains. Subsequently, it accepted that appellant sustained a recurrence of disability on July 24, 1985 causally related to her accepted May 7, 1985 employment injuries. In a claim filed under OWCP File No. xxxxxx103, OWCP accepted that she sustained cervical and thoracic strains, and left trapezius myositis while in the performance of duty on July 24, 1985. It administratively combined OWCP File Nos. xxxxxx103 and xxxxxx086, with OWCP File No. xxxxxx086 serving as the master file.

By decisions dated September 14, 2000, August 4, 2003, and February 9, 2005, the Board affirmed OWCP's nonmerit decisions denying appellant's requests for reconsideration regarding

² For final adverse decisions of OWCP issued prior to November 19, 2008, the Board's review authority is limited to appeals which are filed within one year from the date of issuance of OWCP's decision. *See* 20 C.F.R. § 501.3(d)(2). For final adverse decisions issued by OWCP on and after November 19, 2008, the Board's review authority is limited to appeals which are filed within 180 days from the date of issuance of OWCP's decision. *See* 20 C.F.R. § 501.3(e).

³ 5 U.S.C. § 8101 *et seq.*

⁴ Together with her appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). By order dated March 11, 2019, the Board exercised its discretion and denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 18-1496 (issued March 11, 2019).

⁵ Docket No. 99-0958 (issued September 14, 2000), *petition for recon. denied*, Docket No. 99-0958 (issued June 5, 2001); Docket No. 03-0956 (issued August 4, 2003); Docket No. 04-1741 (issued February 9, 2005); Docket No. 08-0571 (issued May 9, 2008); Docket No. 09-0042 (issued April 15, 2009); Docket No. 12-0544 (issued March 13, 2012), *petition for recon. denied*, Docket No. 12-0544 (issued September 14, 2012); *Order Remanding Case*, Docket No. 13-1824 (issued May 16, 2014); Docket No. 15-0550 (issued January 28, 2016); and Docket No. 16-1404 (issued April 14, 2017).

the denial of her claim for a recurrence of disability commencing November 7, 1986 as they were untimely filed and failed to demonstrate clear evidence of error.⁶

OWCP, by decision dated January 18, 2007, terminated appellant's wage-loss compensation and medical benefits based on the medical opinion of Dr. Mukund Komanduri, a Board-certified orthopedic surgeon and an impartial medical specialist, who opined that she no longer had any residuals of her accepted May 7 and July 24, 1985 employment injuries. That decision was affirmed by an OWCP hearing representative on November 15, 2007. Appellant, through counsel, appealed to the Board, and by decision dated May 9, 2008, the Board affirmed the January 18 and November 15, 2007 decisions. By order dated April 15, 2009, the Board remanded the case for consolidation of appellant's prior claims.⁷

Following the remand, OWCP denied appellant's request for reconsideration of its termination decision on a number of occasions, finding that the requests were untimely filed and failed to establish clear evidence of error. The December 15, 2011 decision was appealed to the Board. By decision dated March 13, 2012, the Board affirmed the denial of appellant's reconsideration request because it was untimely filed and failed to demonstrate clear evidence of error.

Appellant continued filing requests for reconsideration and an appeal was filed to the Board regarding OWCP's March 18, 2013 decision. In an order dated May 16, 2014, the Board set aside the March 18, 2013 decision, finding that OWCP had improperly designated her request for reconsideration from its denial of her recurrence claim rather than from its termination decision. The Board remanded the case for OWCP to correct its procedural error.⁸

On remand, by decision dated July 1, 2014, OWCP denied appellant's request for reconsideration of its January 18, 2007 termination decision, finding that it was untimely filed and failed to demonstrate clear evidence of error.

Appellant filed additional requests for reconsideration and appealed OWCP decisions dated August 22, September 23, and December 8, 2014 to the Board. By decision dated January 28, 2016, the Board found that OWCP properly denied her requests for reconsideration because they were untimely filed and failed to demonstrate clear evidence of error.⁹

Appellant continued to request reconsideration of the termination of her compensation benefits. By decision dated April 5, 2016, OWCP again denied her reconsideration request as it was untimely filed and failed to demonstrate clear evidence of error.

⁶ Docket No. 99-0958 (issued September 14, 2000), *petition for recon. denied*, Docket No. 99-0958 (issued June 5, 2001); Docket No. 03-0956 (issued August 4, 2003); Docket No. 04-1741 (issued February 9, 2005); and Docket No. 09-0042 (issued April 15, 2009).

⁷ *Order Remanding Case*, Docket No. 09-0042 (issued April 15, 2009).

⁸ *Order Remanding Case*, Docket No. 13-1824 (issued May 16, 2014).

⁹ Docket No. 15-0550 (issued January 28, 2016).

Appellant appealed to the Board. By decision dated April 14, 2017, the Board affirmed OWCP's April 5, 2016 decision.¹⁰

In letters received by OWCP on January 17, 2018, appellant again requested reconsideration of the January 18, 2007 termination decision. By decision dated February 28, 2018, OWCP denied her reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On April 24, 2018 appellant again requested reconsideration of OWCP's January 18, 2007 termination decision. She contended that OWCP abused its authority by terminating all of her benefits on January 18, 2007 without providing proper notice pursuant to 5 U.S.C. § 8106(c) after it received a third medical report dated January 17, 2007 from Dr. Mukund Komanduri, a Board-certified orthopedic surgeon, selected as the impartial medical examiner, upon whose opinion the termination of wage-loss compensation and medical benefits was based. Appellant asserted that his report was cursory and he did not respond to questions posed by OWCP. She claimed that this error was criminal and that another referee examiner should be appointed.

Appellant submitted correspondence between herself and OWCP regarding the termination of her compensation benefits previously of record. She also submitted medical reports previously of record, including Dr. Komanduri's January 17, 2007 report.

By decision dated July 12, 2018, 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.¹¹ 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.¹² 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).¹³ Imposition of this one-year filing limitation does not constitute an abuse of discretion.¹⁴

OWCP may not deny a reconsideration request solely because it was untimely filed. When a claimant's request for reconsideration is untimely filed, OWCP must nevertheless undertake a

¹⁰ Docket No. 16-1404 (issued April 15, 2017).

¹¹ 5 U.S.C. § 8128(a); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

¹² 20 C.F.R. § 10.607(a).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

¹⁴ *J.W.*, *supra* note 11; *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

limited review to determine whether it demonstrates clear evidence of error.¹⁵ If an application demonstrates clear evidence of error, it will reopen the case for merit review.¹⁶

To demonstrate clear evidence of error, a claimant must submit evidence that is relevant to the issue that, was decided by OWCP,¹⁷ is positive, precise, and explicit, and is manifest on its face that OWCP committed an error.¹⁸ Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹⁹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.²⁰ 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.²¹ To demonstrate clear evidence of error, the evidence submitted 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.²²

Evidence that does not raise a substantial question as to the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. A determination of whether the claimant has demonstrated clear evidence of error entails a limited review of how the evidence submitted with the reconsideration request bears on the evidence previously of record.²³

ANALYSIS

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.

¹⁵ See 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

¹⁶ *G.G.*, Docket No. 18-1074 (issued January 7, 2019); see also 20 C.F.R. § 10.607(b); *supra* note 13 at Chapter 2.1602.5 (February 2016).

¹⁷ See *A.F.*, Docket No. 18-0645 (issued October 26, 2018); *Dean D. Beets*, 43 ECAB 1153 (1992).

¹⁸ See *A.F.*, *id.*; *Leona N. Travis*, 43 ECAB 227 (1991).

¹⁹ *J.D.*, Docket No. 16-1767 (issued January 12, 2017); *Jimmy L. Day*, 48 ECAB 652 (1997).

²⁰ *Id.*

²¹ *Id.*

²² *J.W.*, *supra* note 11; *Robert G. Burns*, 57 ECAB 657 (2006).

²³ See *J.S.*, Docket No. 10-0385 (issued September 15, 2010); *B.W.*, Docket No. 10-0323 (issued September 2, 2010).

The Board finds that OWCP properly determined that appellant's request for reconsideration was untimely filed. OWCP's regulations²⁴ and procedures²⁵ establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case. The most recent merit decision was the Board's May 9, 2008 decision. Appellant had one year from the date of that decision to timely request reconsideration. As her reconsideration request was received by OWCP on April 24, 2018 more than one year after the May 9, 2008 merit decision, it was untimely filed.

The Board further finds that appellant failed to demonstrate clear evidence of error. The Board's May 9, 2008 merit decision affirmed OWCP's January 18 and November 15, 2007 decisions finding that OWCP met its burden of proof to terminate her wage-loss compensation and medical benefits based on Dr. Komanduri's impartial medical opinion that she no longer had any residuals or disability causally related to her accepted May 7 and July 24, 1985 employment injuries. In her untimely request for reconsideration, appellant contended that OWCP abused its authority by terminating all of her benefits on January 18, 2007 without providing proper notice pursuant to 5 U.S.C. § 8106(c) after it received a third medical report dated January 17, 2007 from Dr. Komanduri. She further contended that OWCP improperly relied upon his opinion to terminate her benefits. Appellant asserted that Dr. Komanduri's report was cursory and he did not respond to questions posed by OWCP. She claimed that this error was criminal and that another referee examiner should be appointed. The Board notes that OWCP issued a proposed notice of termination of compensation benefits on December 8, 2006. Moreover, the Board previously addressed appellant's contentions that she did not receive a proposed notice of her compensation benefits and that Dr. Komanduri's report did not constitute the special weight of the medical evidence and determined that her arguments did not establish clear evidence of error. Repetitive or cumulative evidence is insufficient to shift the weight of the evidence in favor of the claimant.²⁶ For the foregoing reasons, the Board finds that the arguments submitted by appellant do not shift the weight of the evidence in favor of her claim or raise a substantial question concerning the correctness of OWCP's decision to terminate her compensation benefits.

Appellant submitted copies of documents and medical reports previously of record. As stated, repetitive or cumulative evidence is insufficient to shift the weight of the evidence in favor of the claimant.²⁷ Appellant has not explained how the resubmission of this evidence demonstrates clear evidence of error.²⁸ The Board finds that the additional evidence submitted does not demonstrate clear evidence of error.

²⁴ 20 C.F.R. § 10.607(a); *see Alberta Dukes*, 56 ECAB 247 (2005).

²⁵ *Supra* note 13 at Chapter 2.1602.4 (February 2016); *see A.F.*, *supra* note 17; *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

²⁶ *M.P.*, Docket No. 17-0367 (issued March 12, 2018); *A.M.*, Docket No. 17-1434 (issued January 2, 2018); *D.B.*, Docket No. 16-0539 (issued May 26, 2016).

²⁷ *Id.*

²⁸ *See A.M.*, Docket No. 10-0526 (issued November 8, 2010) (appellant did not sufficiently explain how largely duplicative evidence raised a substantial question as to the correctness of OWCP's decision).

The Board finds that appellant's request for reconsideration does not demonstrate on its face that OWCP committed error in its decision terminating her compensation benefits.²⁹ As noted, clear evidence of error is intended to represent a difficult standard.³⁰ Other than simply reiterating her previous arguments and resubmitting evidence, appellant has not met this standard in this case.³¹

On appeal, appellant contends that she was denied due process and the impartial medical examiner's report was not entitled to the special weight of the medical evidence. For the reasons set forth above, and because the Board lacks jurisdiction over the merits of the claim, the Board finds that the assertions and the evidence submitted in support of appellant's untimely request for reconsideration were insufficient to shift the weight of the evidence in her favor and raise a substantial question as to the correctness of OWCP's decision terminating her compensation benefits.

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.

²⁹ See *S.F.*, Docket No. 09-0270 (issued August 26, 2009).

³⁰ See *supra* note 13.

³¹ *R.L.*, Docket N. 18-0496 (issued January 9, 2019).

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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