

FACTUAL HISTORY

On June 17, 2016 appellant, then a 62-year-old mail handler (group leader), filed a traumatic injury claim (Form CA-1) alleging that on June 3, 2016 he tripped over a pallet jack and fell while in the performance of duty injuring his head, back, shoulders, buttocks, and neck.

In a June 29, 2016 development letter, OWCP noted that when appellant's claim was first received, it appeared to be a minor injury that resulted in minimal lost time from work. It authorized payment of a limited amount of medical expenses without formally considering the merits of the claim. As appellant had not returned to full-duty work, OWCP reopened his claim for consideration of the merits. It advised him of the deficiencies of his claim and requested additional factual and medical evidence from him. OWCP provided appellant with a questionnaire for his completion and afforded him 30 days for a response.

On June 17, 2016 the employing establishment provided appellant with an authorization for examination and/or treatment (Form CA-16). Dr. Peter Perdik, a Board-certified internist and pulmonologist, completed this form on June 22, 2016 and diagnosed head injury and back injury. He indicated by checking a box marked "yes" that he believed that appellant's condition was caused or aggravated by his employment activity. In a separate note dated June 22, 2016, Dr. Perdik examined appellant related to the June 3, 2016 employment incident and again diagnosed head and lower back injuries.

By decision dated August 3, 2016, OWCP accepted that the June 3, 2016 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim finding that the medical evidence of record did not establish a valid medical diagnosis in connection with the accepted June 3, 2016 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On August 9, 2016 appellant provided a factual statement in response to OWCP's development letter. He noted that he sustained a lump on his head due to the fall and experienced mild shaking in his arm. Appellant sought medical attention on June 4, 2016 and was diagnosed with a concussion.

On July 11, 2017 appellant requested reconsideration of the August 3, 2016 decision and submitted additional medical evidence. In a note dated June 8, 2017, Dr. Nanda D. Ramsaroop, a Board-certified internist, reported that she examined appellant on June 4, 2016 due to his June 3, 2016 employment incident. She noted that appellant fell backwards over a pallet jack and hit his head. Dr. Ramsaroop diagnosed concussion and back pain. On June 10, 2016 appellant underwent a brain magnetic resonance imaging (MRI) scan which demonstrated thickening of his sinuses.

By decision dated October 6, 2017, OWCP modified the August 3, 2016 decision finding that appellant had established a medical diagnosis in connection with the accepted employment incident, but it continued to deny the claim as the record did not contain a rationalized medical opinion establishing causal relationship between the diagnosis of concussion and the accepted June 3, 2016 employment incident.

On October 16, 2018 appellant requested reconsideration of the October 6, 2017 decision. In support of this request, he provided an October 2, 2018 note from Dr. Abdus Khan, a Board-certified internist, who described appellant's June 3, 2016 fall and diagnosed dizziness, tremor of the hands, and pain in the neck, right shoulder, and lower back.

By decision dated November 13, 2018, OWCP denied appellant's request for reconsideration finding that his request was untimely filed and failed to demonstrate clear evidence of error on the part of OWCP.

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.² 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.³ 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).⁴ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁵

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.⁶ If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review.⁷

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 evidence of error. It is not enough to merely show that the evidence could be construed so as to produce a contrary conclusion. 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. To demonstrate clear evidence

² 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

³ 20 C.F.R. § 10.607(a).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

⁵ *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁶ 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁷ *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also id.* at § 10.607(b); *supra* note 4 at Chapter 2.1602.5 (February 2016).

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.⁸

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard. 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.⁹ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁰

ANALYSIS

The Board finds that OWCP properly denied appellant's October 16, 2018 request for reconsideration finding that it was untimely filed and failed to demonstrate clear evidence of error.

OWCP's regulations and procedures establish a one-year time limit for requesting reconsideration, which begins on the date of the original OWCP decision.¹¹ For OWCP decisions issued on or after August 29, 2011, the date of the request for reconsideration is the "received date" as recorded in iFECS.¹² The most recent merit decision was OWCP's October 6, 2017 decision denying appellant's claim for a traumatic injury. Appellant had one year from the date of this decision to make a timely request for reconsideration. Since his request was not received by OWCP until October 16, 2018, more than one year after the October 6, 2017 merit decision, it was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in the denial of his claim.¹³

The Board finds that the evidence submitted by appellant does not demonstrate clear evidence of error because it does not show that OWCP committed an error in denying his traumatic injury claim, nor raise a substantial question as to the correctness of OWCP's October 6, 2017 decision.

⁸ *C.M.*, Docket No. 19-0585 (issued August 15, 2019); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

⁹ *C.M.*, *id.*; *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 4 at Chapter 2.1602.5(a) (February 2016).

¹⁰ *C.M.*, *supra* note 8; *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹¹ *Supra* note 3; *see Alberta Dukes*, 56 ECAB 247 (2005).

¹² *Supra* note 4 at Chapter 2.1602.4 (February 2016); *see Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

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

In support of his untimely request for reconsideration, appellant submitted an October 2, 2018 note from Dr. Khan describing appellant's June 3, 2016 fall and diagnosing dizziness, tremor of the hands, and pain in the neck, right shoulder, and lower back.

Dr. Khan's report fails to provide a valid medical diagnosis and also fails to address the central issue in OWCP's denial of appellant's claim, the lack of rationalized medical opinion evidence establishing causal relationship between appellant's valid medical diagnoses and his accepted employment incident. Thus, the Board finds that the report of Dr. Khan is insufficient to shift the weight of the evidence in favor of appellant or raise a fundamental question as to the correctness of OWCP's decision denying his request for reconsideration.¹⁴

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.¹⁵ The evidence submitted does not manifest on its face that OWCP committed an error in its October 6, 2017 decision denying appellant's claim for a traumatic injury. Appellant has not otherwise submitted evidence of sufficient probative value to raise a substantial question as to the correctness of OWCP's last merit decision. Thus, the Board finds that the evidence is insufficient to demonstrate clear evidence of error.¹⁶

CONCLUSION

The Board finds that OWCP properly denied appellant's October 16, 2018 request for reconsideration finding that it was untimely filed and failed to demonstrate clear evidence of error.

¹⁴ *Supra* note 8.

¹⁵ *Supra* note 4 at Chapter 2.1602.5.a (February 2016); see *Dean D. Beets*, 43 ECAB 1153, 157-58 (1992).

¹⁶ A properly completed CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the November 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 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