

FACTUAL HISTORY

On July 4, 2016 appellant, then a 44-year-old deputy clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date, she sustained torn ligaments in her right wrist while in the performance of duty. She noted that she woke up on the morning of July 4, 2016 and could not move her right hand due to pain. On the reverse side of the claim form, appellant's supervisor indicated that she stopped work on the date of injury.

Appellant submitted factual and medical evidence in support of her claim. In an August 27, 2016 right wrist magnetic resonance imaging (MRI) scan report, Dr. Howard J. Dipiazza, a diagnostic radiologist, provided an impression of complete tear of the volar aspect of the distal radial ulnar joint with dorsal subluxation of the distal ulna and a volar subluxation of the extensor carpi ulnaris tendon, which may be a peripheral tear of the triangular fibrocartilage at its dorsal ulnar attachment.

In a development letter dated May 4, 2017, OWCP acknowledged receipt of appellant's claim and informed her that additional evidence was needed to establish her claim. It specifically noted that the evidence was insufficient to establish that she actually experienced the employment incident as alleged and requested that she respond to an attached questionnaire in order to determine whether the alleged injury occurred in the performance of duty. OWCP also requested medical evidence in support of appellant's claim. It afforded her 30 days to submit the requested information.

In response, appellant submitted two narrative statements, one undated and one dated May 8, 2017. She restated the history provided on her claim form and noted that she was evaluated in an emergency room on July 4, 2016. Appellant also noted that one week prior to her claimed injury, she had a busy schedule performing computer and data entry work. She reported having some discomfort and tightness in her wrists. Appellant alleged that she had not engaged in any unusual activities. She submitted three witness statements from her daughter and coworkers with descriptions of the claimed July 4, 2016 work incident, her repetitive work duties and medical treatment, which included wearing a right wrist cast for five weeks and then undergoing physical therapy. Appellant indicated that she returned to work on November 21, 2016 and requested accommodations. She contended that Dr. Eric D. McDonald, Board-certified in emergency medicine, diagnosed tendinitis or sprained muscles, and Alfred L. Phelps, a certified physician assistant, and Dr. Terrell P. Julien, an orthopedic surgeon, advised her that her wrist injury was work related.

OWCP continued to receive medical evidence. In an April 27, 2017 left wrist x-ray report, Dr. Saad Manzoul, a Board-certified diagnostic radiologist, provided an impression of no acute osseous injury.

Dr. Summer Reid Herlihy, a diagnostic radiologist, noted in a left wrist MRI scan report dated May 23, 2017, her impression that appellant's pain corresponded to the dorsal-ulnar aspect of the wrist at the level of the extensor carpi ulnaris tendon. She also provided an impression of slight flattening of the median nerve within the carpal tunnel at the level of the hamate raising question of carpal tunnel syndrome, correlate clinically. Dr. Herlihy further provided an impression of tiny central perforation questioned in the central disc of the triangular fibrocartilage

complex (TFCC) and undersurface signal abnormality in the dorsal and volar radioulnar ligaments, likely degenerative.

By decision dated June 13, 2017, OWCP accepted that the July 4, 2016 incident occurred as alleged, that a medical condition had been diagnosed, and that appellant was within the performance of duty when injured. However, it denied her claim, finding that the medical evidence of record was insufficient to establish that her diagnosed bilateral wrist conditions were causally related to the accepted July 4, 2016 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury or medical condition causally related to the accepted employment incident.

On July 11, 2017 appellant requested reconsideration and submitted additional medical evidence.

In a right wrist x-ray report dated July 4, 2016, Dr. Han Y. Kim, a Board-certified radiologist, noted no acute bony abnormality.

By decision dated October 6, 2017, OWCP denied modification of its June 13, 2017 decision.

On December 26, 2018 appellant, through counsel, requested reconsideration. Counsel contended that accompanying medical evidence, including reports from Dr. Cecil D. George, an internist, and Dr. Richard O. Pyfrom, a Board-certified orthopedic surgeon, established that she had sustained bilateral wrist conditions due to her repetitive work duties.

In a report dated October 8, 2018, Dr. George noted a history of injury that on July 4, 2016 appellant experienced sudden nontraumatic severe right wrist pain and an inability to move her wrist. He also noted her subsequent medical treatment. Dr. George further noted that appellant subsequently developed left wrist pain after working on a poor ergonomic desk at work. Appellant experienced persistent bilateral wrist pain. Dr. George provided findings on physical examination and diagnosed routine physical and right wrist pain. He opined that appellant had occupational-related torn tendons in the right hand due to repetitive work-related motions and left wrist and digit pain secondary to repetitive strain injury. Dr. George referred appellant to Dr. Pyfrom for evaluation of her bilateral hand and wrist pain due to a work-related repetitive strain injury.

Dr. Pyfrom, in an October 18, 2018 patient note, obtained a history of injury that on July 4, 2016 appellant woke up and could not move her right hand. He noted that a 2016 MRI scan showed a torn distal radioulnar volar attachment in the right hand and appellant was placed in a cast for five weeks. Dr. Pyfrom indicated that in 2018 appellant experienced left hand pain and that an MRI scan revealed a tiny, likely degenerative central TFCC tear in the left wrist, minimal fluid in the tendon sheath of the extensor carpi ulnaris (ECU), and no torn TFCC radial and styloid attachments. He noted her work duties, which included long periods of data entry and typing on a computer while preparing documentation for trial cases for 12 judges and using a computer mouse repetitively with her right hand. Dr. Pyfrom noted that appellant performed these duties for many years without ergonomic equipment until April 23, 2017 when she received such equipment. He noted that she presented for evaluation of severe bilateral wrist and hand pain. Dr. Pyfrom discussed findings on physical examination and provided assessments of other synovitis and

tenosynovitis of the right and left forearms, primary ECU tenosynovitis, and overexertion from repetitive movements, initial encounter. He opined that appellant's bilateral wrist tendinitis/tendinopathy was directly and causally related to the repetitive nature of her job, preparing case jackets with the wrist in positions of sustained and repetitive ulnar deviation as she did not have an ergonomically designed computer keyboard and mouse. In addition, Dr. Pyfrom maintained that lifting, pulling, and wrist supination and pronation movements needed for lifting, opening, and closing the large case jackets during her 25-year career were well known to put stresses on the extensor carpi ulnaris tendon and the distal radioulnar joint where appellant's condition was found. Dr. Pyfrom further maintained that this was especially true in appellant's case since there was no history of traumatic injury to the wrists.

In a December 20, 2018 report, a registered nurse, whose signature is illegible, noted a history that appellant developed an onset of bilateral wrist pain on that date.

Appellant also resubmitted Dr. Kim's July 4, 2016 x-ray report, Dr. Dipiazza's August 27, 2016 MRI scan report, Dr. Manzoul's April 27, 2017 x-ray report, and Dr. Herlihy's May 23, 2017 MRI scan report.

By decision dated April 2, 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.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 application for review is untimely filed, it must nevertheless undertake a limited

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).

review to determine whether it demonstrates clear evidence of error.⁶ If an application demonstrates clear evidence of error, it 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 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. The claimant must present evidence which on its face shows that OWCP made an error (for example, proof that a schedule award was miscalculated). 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 determined that appellant's request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

OWCP's regulations¹¹ and procedures¹² establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.¹³

⁶ See 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 20 C.F.R. § 10.607(b); *supra* note 4 at Chapter 2.1602.5 (February 2016).

⁸ *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

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

¹⁰ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹¹ 20 C.F.R. § 10.607(a); see *J.W.*, *supra* note 8; *Alberta Dukes*, 56 ECAB 247 (2005).

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

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

The last merit decision was OWCP's October 6, 2017 decision which denied modification of its prior denial of appellant's traumatic injury claim. As her request for reconsideration was not received by OWCP until December 26, 2018, more than one year after the October 6, 2017 decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in denying her traumatic injury claim.

The Board further finds that appellant has not demonstrated clear evidence of error on the part of OWCP in its last merit decision. OWCP denied her traumatic injury claim as the medical evidence of record was insufficient to establish that her diagnosed bilateral wrist conditions were causally related to the accepted July 4, 2016 employment incident.

In his request for reconsideration, counsel contended that Dr. George's October 8, 2018 and Dr. Pyfrom's October 18, 2018 reports established that appellant sustained bilateral wrist conditions due to her repetitive work duties. However, he has not explained how this evidence raises a substantial question as to the correctness of OWCP's decision denying her traumatic injury claim.¹⁴

Moreover, Dr. George's and Dr. Pyfrom's reports are insufficient to demonstrate clear evidence of error with respect to OWCP's October 6, 2017 decision. Dr. George provided a history of the accepted July 4, 2016 employment incident, but referred to appellant's repetitive right hand work-related motions. To the contrary, Dr. Pyfrom did not provide a history of the accepted work incident. Both physicians opined that appellant's diagnosed bilateral wrist conditions were due to her repetitive work duties and a repetitive strain injury. However, they did not offer an opinion addressing the underlying issue in this case, whether appellant had a bilateral wrist condition causally related to the accepted July 4, 2016 employment incident. Therefore, their reports are insufficient to shift the weight of the medical evidence.¹⁵

Appellant also submitted a December 20, 2018 report from a registered nurse. A nurse is not considered a "physician" as defined under FECA and thus her report does not constitute competent medical evidence.¹⁶ Consequently, this report is insufficient to demonstrate clear error by OWCP with respect to the underlying medical issue.

Appellant also submitted copies of Dr. Kim's July 4, 2016 x-ray report, Dr. Dipiazza's August 27, 2016 MRI scan report, Dr. Manzoul's April 27, 2017 x-ray report, and Dr. Herlihy's

¹⁴ See *P.B.*, Docket No. 18-0265 (issued September 5, 2018).

¹⁵ *P.P.*, Docket No. 16-0913 (issued October 4, 2016).

¹⁶ 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law). See *id.* at § 8101(2); *N.C.*, Docket No. 18-0459 (issued August 2, 2018); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). See also *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

May 23, 2017 MRI scan report, which were previously of record. This evidence, however, does not manifest on its face that OWCP committed an error in its October 6, 2017 decision.¹⁷

The Board finds that the evidence submitted in support of the untimely request for reconsideration is insufficient to shift the weight of the evidence in favor of appellant's claim or to raise a substantial question that OWCP erred in its October 6, 2017 decision. Accordingly, the Board finds that OWCP properly denied her reconsideration request, as it was untimely filed and failed to demonstrate 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.

ORDER

IT IS HEREBY ORDERED THAT the April 2, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁷ See *D.V.*, *supra* note 14; *M.D.*, Docket No. 18-0017 (issued May 9, 2019); *S.M.*, Docket No. 17-0385 (issued June 26, 2018).