

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

T.N., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
IMMIGRATION & CUSTOMS)
ENFORCEMENT, San Diego, CA, Employer)

**Docket No. 18-1613
Issued: April 29, 2020**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 21, 2018 appellant filed a timely appeal from March 15 and July 25, 2018 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP). The most recent merit decisions were Board decisions dated September 16, 2014 and December 16, 2016, which became final 30 days after issuance, and are not subject to further review.¹ As there was no merit decision issued by OWCP within 180 days of the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.³

¹ 20 C.F.R. § 501.6(d); *see P.H.*, Docket No. 19-1354 (issued March 13, 2020); *G.G.*, Docket No. 18-1074 (issued January 7, 2019).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the July 25, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether OWCP, by its March 15, 2018 decision, properly denied appellant's December 15, 2017 request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a); and (2) whether OWCP, by its July 25, 2018 decision, properly denied appellant's December 15, 2017 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 presented in the Board's prior decisions and orders are incorporated herein by reference. The relevant facts pertaining to the issues presented are as follows.

On August 20, 1998 appellant, then a 39-year-old deportation assistant, filed an occupational disease claim (Form CA-2) attributing her bilateral upper extremity pain and numbness to her federal employment duties. On November 20, 1998 OWCP accepted bilateral wrist, elbow, and shoulder strain/sprain, but denied her claim for cervical strain.⁵ In July 2000 it expanded acceptance of the claim to include bilateral carpal tunnel syndrome.⁶

In March 2001 appellant resigned from federal employment. She returned to federal employment with the U.S. Attorney's Office in June 2003. On March 12, 2004 OWCP expanded acceptance of her claim to include cervical radiculopathy, resolved.⁷ The record indicates that appellant was removed from employment effective May 11, 2010.

Appellant continued to allege that her current cervical condition was employment related, and OWCP continued to develop this issue. She underwent cervical spine surgery on March 13, 2007.⁸ Subsequent procedural history and circumstances are described in detail in

⁴ *Order Remanding Case*, Docket No. 05-0844 (issued September 1, 2005) (the Board order setting aside the February 23, 2004 OWCP decision and remanding the case because OWCP improperly denied appellant's hearing request); *Order Dismissing Appeal*, Docket No. 06-1552 (issued July 12, 2007) (the Board dismissed appeal because case in interlocutory status); *Order Remanding Case*, Docket No. 09-2350 (issued February 4, 2010) (the Board remanded case to OWCP for reconstruction and proper assemblage of the record); *Order Remanding Case*, Docket No. 10-1810 (issued May 25, 2011) (the Board remanded for further development of medical evidence regarding appellant's claimed cervical condition); Docket No. 12-1056 (issued December 18, 2012) (the Board remanded because conflict remained regarding whether appellant's cervical condition was employment related); Docket No. 13-2097 (issued September 16, 2014) (the Board found OWCP did not abuse its discretion by denying reimbursement for travel expenses); Docket No. 16-0895 (issued December 16, 2016) (the Board found OWCP properly denied merit review of OWCP decision regarding denial of wage-loss compensation for periods in 2012 and 2014, and that appellant did not establish entitlement to a schedule award).

⁵ The record also indicates that appellant was involved in nonwork-related motor vehicle accidents in 1996 and 1999.

⁶ On October 12, 2006 appellant underwent authorized right carpal tunnel release surgery.

⁷ By decision dated February 23, 2004, an OWCP hearing representative reversed a July 22, 2003 decision, which denied appellant's claim for a cervical condition as causally related to her federal employment. She found that appellant's claims should be expanded to include cervical radiculopathy based on the April 5, 2000 report of Dr. Travis Calvin, Jr., appellant's treating physician who was Board-certified in neurology and pain management.

⁸ The postoperative diagnoses were cervical degenerative disc disease at C5-6 and cervical radiculopathy at C4-6.

previous Board decisions.⁹ While OWCP was developing appellant's claim regarding a cervical condition, she continued to seek medical treatment for the accepted bilateral upper extremity conditions and for her cervical condition.¹⁰

On July 25, 2012 appellant filed a claim for compensation (Form CA-7) for the period July 1 to October 1, 2012.

An August 13, 2012 thread maintenance memorandum indicated that appellant had submitted a claim for travel reimbursement on May 22, 2012 for 772 miles.

On March 14, 2013 the employing establishment confirmed that it would have been able to accommodate appellant's work restrictions when she was terminated effective May 11, 2010. OWCP thereafter paid appellant retroactive compensation on the supplemental compensation rolls for the period August 1 to October 31, 2012.

In April 2013 appellant filed additional Form CA-7 claims for compensation covering the periods January 1 through December 31, 2011, January 1 to June 30, 2012, October 24 to December 31, 2012, and January 1 to March 31, 2013.¹¹

By letter dated June 10, 2013, OWCP advised appellant that her request for travel reimbursement for May 22, 2012 had been denied. It explained that its regulations provided that medical travel reimbursement of up to 100 miles round trip was considered reasonable, but that any claim for travel reimbursement in excess of 100 miles must be medically justified and preauthorized in order to be paid.

On September 19, 2013 appellant filed a timely appeal with the Board from the June 10, 2013 decision.

After further development regarding whether her cervical condition had resolved, OWCP determined that a conflict in medical opinion evidence existed regarding whether she continued to suffer from a work-related cervical condition and whether she remained disabled. It referred appellant, along with a statement of accepted facts (SOAF), to Dr. Harry Marinow, a Board-certified orthopedic surgeon, for an impartial medical examination in order to resolve the

⁹ This included an order remanding case dated May 25, 2011 in which the Board found the case not in posture for decision regarding the claimed cervical condition. Docket No. 10-1810 (issued May 25, 2011). OWCP then determined that a conflict in medical evidence had been created regarding appellant's cervical condition and referred appellant to Dr. Richard Maxwell, Board-certified in orthopedic surgery, for an impartial medical examination. He furnished a November 18, 2011 report. OWCP attempted to obtain clarification from Dr. Maxwell, which he did not submit. Therefore, in June 2013 OWCP referred appellant to Dr. Harry Marinow, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict.

¹⁰ The U.S. Attorney's Office terminated appellant's employment effective May 11, 2010. On August 1, 2012 appellant underwent revision of right carpal tunnel release, a left carpal tunnel release, and a right de Quervain's release.

¹¹ Appellant resubmitted these claims with the employing establishment's certification on June 14, 2013.

conflict.¹² On July 2, 2014 Dr. Marinow's office informed OWCP that appellant did not attend the impartial medical examination scheduled for July 1, 2014.

By letter dated July 10, 2014, OWCP proposed to suspend appellant's entitlement to compensation benefits under 5 U.S.C. § 8123(d) because she failed to report to the examination with Dr. Marinow on July 1, 2014 as directed. It afforded her 14 days to provide an explanation of her refusal to attend the examination as directed. In correspondence dated July 16, 2014, appellant disagreed with the proposed suspension.

On July 29, 2014 OWCP finalized the suspension of appellant's wage-loss and medical compensation benefits, effective that day.

On August 11, 2014 appellant filed a claim for compensation (Form CA-7) for wage loss for the period July 1 to 31, 2014.

By decision dated September 16, 2014, the Board affirmed the June 10, 2013 OWCP decision. The Board found that OWCP did not abuse its discretion by denying appellant's request for reimbursement of travel expenses on May 22, 2012 because she failed to show that her travel was necessary and reasonable for treatment of the accepted conditions, and because she did not request prior authorization.¹³

On September 23, 2014 appellant attended a rescheduled impartial medical examination with Dr. Marinow, who provided a September 23, 2014 report. It did not include an impairment evaluation. Dr. Marinow, however, opined that appellant's current cervical condition was causally related to her employment injuries and was also aggravated by the April 28, 1999 nonwork-related motor vehicle accident.

On June 24, 2015 OWCP retroactively paid appellant wage-loss compensation for the period November 1, 2012 through July 28, 2014 and September 23, 2014 through June 27, 2015. It placed her on the periodic compensation rolls effective June 28, 2015.

On July 3, 2015 appellant requested reconsideration of OWCP's denial of compensation benefits for the periods January 1 to July 31, 2012 and July 29 to September 22, 2014.

On July 13, 2015 appellant filed a claim for a schedule award (Form CA-7).

By development letter dated July 21, 2015, OWCP advised appellant of the type of evidence needed to establish her schedule award claim. It requested that she provide an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).¹⁴ OWCP afforded appellant 30 days to submit the requested information. Appellant did not submit additional evidence.

¹² *Supra* note 9. The Board also notes that the record previously indicated that appellant had additional cervical spine surgery on May 16, 2012. However, appellant has been consistent in explaining that she did not have cervical surgery in 2012.

¹³ Docket No. 13-2097 (issued September 16, 2014).

¹⁴ A.M.A., *Guides* (6th ed. 2009).

By decision dated September 30, 2015, OWCP denied appellant's July 3, 2015 reconsideration request regarding entitlement to wage-loss compensation for the periods January 1 to July 31, 2012 and July 29 to September 22, 2014. It found the evidence presented insufficient to warrant modification of its July 29, 2014 decision.

By decision dated October 20, 2015, OWCP denied appellant's claim for a schedule award. It noted that she did not respond to its July 21, 2015 request for medical documentation.

On March 26, 2016 appellant filed an appeal with the Board from the September 30, 2015 nonmerit decision and from the October 20, 2015 merit decision denying her schedule award claim.

By decision dated December 16, 2016, the Board affirmed both OWCP decisions. Regarding the September 30, 2015 nonmerit decision, the Board found that OWCP properly refused to reopen her case for further consideration of the merits of her claim because appellant had not shown that OWCP erroneously applied or interpreted a specific point of law, had not advanced a relevant legal argument not previously considered by OWCP, and had not submitted relevant and pertinent new evidence not previously considered by OWCP. With regard to her schedule award claim, the Board found that appellant had failed to submit sufficient evidence to show that she sustained a permanent impairment of a scheduled member due to an employment injury.¹⁵

On November 20, 2017 OWCP expanded the acceptance of appellant's claim to include other cervical disc degeneration at C4-5 level.

On December 15, 2017 appellant requested reconsideration of the issues addressed in the September 16, 2014 and December 16, 2016 Board decisions. She maintained that she had submitted pertinent new evidence prior to these decisions, and that a district director's letter dated June 22, 2015 indicated that OWCP committed error by not timely accepting her cervical condition because it failed to consider her accepted cervical condition as a basis for permanent impairment. Appellant further maintained that OWCP erred in suspending her monetary compensation for the period July 29 through September 22, 2012. Regarding the Board's September 16, 2014 decision which denied authorization for travel reimbursement, appellant asserted that her case record was not transmitted to the Board for proper review, which established abuse of discretion. She related that in the June 22, 2015 decision, OWCP indicated that it was "reprocessing claim dates of May 22, August 1, and August 14, 2012." Appellant indicated that she had sent numerous inquiries about reimbursement for her travel, but no action had been taken.

By decision dated March 15, 2018, OWCP denied further merit review of appellant's claim under 5 U.S.C. § 8128(a) regarding her entitlement to wage-loss compensation in 2012 and 2014 and her claim for a schedule award. It found that her reconsideration request did not raise substantive legal questions and did not include new and relevance evidence sufficient to warrant further merit review of her claim for wage loss in 2012 and 2014 and as to whether she was entitled to a schedule award.

¹⁵ Docket No. 16-0895 (issued December 16, 2016).

By decision dated July 25, 2018, OWCP denied appellant's reconsideration request regarding travel reimbursement. It found that her reconsideration request was untimely filed and failed to demonstrate clear evidence of error by its denial of travel authorization.

LEGAL PRECEDENT -- ISSUE 1

Section 8128(a) of FECA¹⁶ vests OWCP with discretionary authority to determine whether to 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 own motion or on application.¹⁷

OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a). As one such limitation, section 10.607(a) of its regulations provides that an application for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁸

OWCP procedures require a review of the file to determine whether the application for reconsideration was received within one year of a merit decision. The one-year period begins on the date of the original decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board, and any merit decision following action by the Board, but does not include preresumption hearing decisions.¹⁹ Timeliness is determined by the document receipt date of the reconsideration request (the received date in the Integrated Federal Employee's Compensation System (iFECS)). If the request for reconsideration has a document received date greater than one year, the request must be considered untimely.²⁰

OWCP will consider an untimely application only if the application demonstrates clear evidence of error on the part of it in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.²¹ The term clear evidence of error is intended to represent a difficult standard. If clear evidence of error has not been present, 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.²²

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a

¹⁶ *Supra* note 2.

¹⁷ 5 U.S.C. § 8128(a).

¹⁸ 20 C.F.R. § 10.607(a).

¹⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

²⁰ *Id.*

²¹ *Id.* at Chapter 2.1602.5a; see *G.B.*, Docket No. 17-1298 (issued January 25, 2018).

²² *Id.* at Chapter 2.1602.5b.

specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.²³

ANALYSIS -- ISSUE 1

The Board finds that, with regard to OWCP's finding denying merit review of appellant's entitlement to wage-loss compensation in 2012 and 2014, this case is not in posture for decision and must be remanded to OWCP for the application of the appropriate standard of review.²⁴

An application for reconsideration must be received by OWCP within one year of the date of a merit review of the claim, including any merit review by the Board.²⁵ The last merit decision of record regarding the issue of entitlement to wage-loss compensation was OWCP's July 29, 2014 decision. Appellant's request for reconsideration was received on December 15, 2017. In the March 15, 2018 decision on present appeal, OWCP denied her reconsideration request finding that she had failed to submit evidence sufficient to warrant merit review regarding entitlement to wage-loss compensation.

The Board finds that in its March 5, 2018 decision on this issue, OWCP erroneously applied the standard of review for a timely request for reconsideration as set forth at sections 10.605 through 10.607 of its regulations.²⁶ The last merit decision of record was OWCP's July 29, 2014 decision.²⁷ As more than one year had elapsed from the last merit decision to the filing of appellant's request for reconsideration on December 5, 2017, OWCP should have applied the clear evidence of error legal standard.²⁸ This is the appropriate standard for cases in which a reconsideration request is untimely filed.²⁹ OWCP must undertake a limited review to determine whether the application demonstrates clear evidence that the final merit decision was in error.³⁰ However, in this case, regarding appellant's entitlement to wage-loss compensation during 2012 and 2014, OWCP erroneously reviewed the evidence under the standard for timely reconsideration requests pursuant to section 8128(a) of FECA and section 10.606(b)(3) of its regulations. As such, regarding this issue, the Board will remand the case to OWCP for application of the standard for reviewing an untimely request for reconsideration as set forth at section 10.607(b) under the more stringent clear evidence of error standard.³¹

²³ 20 C.F.R. § 10.606(b)(3); *see J.W.*, Docket No. 19-1795 (issued March 13, 2020).

²⁴ *G.B.*, *supra* note 21.

²⁵ *Supra* note 21.

²⁶ 20 C.F.R. § 10.605-10.607.

²⁷ *Supra* note 18. The Board's December 16, 2016 decision did not include a merit review of this issue. Rather, it found that OWCP properly denied merit review.

²⁸ *G.B.*, *supra* note 21.

²⁹ *Supra* notes 23 and 24; *see J.D.*, Docket No. 17-1682 (issued January 18, 2018).

³⁰ *G.B.*, Docket No. 19-1762 (issued March 10, 2020).

³¹ *J.D.*, *supra* note 29.

However, the Board further finds that OWCP properly denied appellant's request for reconsideration pursuant to section 8128(a) of FECA with regard to the denial of her schedule award claim.

Preliminarily, the Board finds that OWCP did not receive any medical evidence showing permanent impairment with appellant's December 15, 2017 reconsideration request. The Board will therefore consider this to be a proper reconsideration request on this issue.³²

In her December 15, 2017 reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a new and relevant legal argument not previously considered. In her statement, she asserted that OWCP should have considered her cervical condition in denying her schedule award claim. However, by its December 16, 2016 decision, the Board found that, at that time, appellant had not submitted pertinent or relevant new evidence.³³ Findings made in prior Board decisions are *res judicata* absent any further review by OWCP, under section 8128 of FECA.³⁴ While OWCP expanded acceptance of appellant's claim on November 20, 2017 to include other cervical disc degeneration at C4-5 level, appellant again submitted no medical evidence to establish entitlement to a scheduled member either prior or subsequent to the Board's December 16, 2016 decision. Thus, appellant did not show legal error by OWCP and did not provide a new and relevant legal argument. Consequently, she was not entitled to a review of the merits based on the first and second above-noted requirements under section 10.606(b)(3).³⁵

The underlying issue is whether appellant met her burden of proof to establish permanent impairment of a scheduled member causally related to her accepted conditions. That is a medical issue that must be addressed by relevant medical evidence not previously considered.³⁶ With her December 15, 2017 reconsideration request, appellant did not submit any medical evidence that addressed this underlying medical issue, regarding any of her accepted conditions including cervical degeneration. Accordingly, appellant was not entitled to a review of the merits based on the third above-noted requirement under section 10.606(b)(3).³⁷

The Board accordingly finds that appellant has not met any of the requirements of section 10.606(b)(3) of OWCP regulations. Pursuant to section 10.608, OWCP properly denied merit review regarding her entitlement to a schedule award.³⁸

³² See *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

³³ *Supra* note 26.

³⁴ *G.B.*, *supra* note 30.

³⁵ *Supra* note 26.

³⁶ *Id.*

³⁷ *B.R.*, *supra* note 32.

³⁸ *Id.*

LEGAL PRECEDENT -- ISSUE 2

To be entitled to a merit review of an OWCP decision denying or terminating a benefit, an application for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.³⁹ Timeliness is determined by the document receipt date, *i.e.*, the "received date" in OWCP's iFECS.⁴⁰ The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the discretionary authority granted OWCP under section 8128(a) of FECA.⁴¹

OWCP may not deny a request for reconsideration solely because the application was not timely filed. When a request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether the application demonstrates clear evidence of error.⁴² OWCP regulations and procedures provide that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's request demonstrates clear evidence of error on the part of OWCP.⁴³

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.⁴⁴ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.⁴⁵ 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 evidence on the part of OWCP.⁴⁶ 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.⁴⁷

OWCP procedures further provide that the term clear evidence of error is intended to represent a difficult standard.⁴⁸ The claimant must present evidence that on its fact shows that OWCP made an error (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized medical report that, if submitted before the denial was issued,

³⁹ 20 C.F.R. § 10.607(a).

⁴⁰ Federal (FECA) Procedure Manual, *supra* note 19 at Chapter 2.1602.4b.

⁴¹ *G.L.*, Docket No. 18-0852 (issued January 14, 2020).

⁴² 20 C.F.R. § 10.607(b); *R.S.*, Docket No. 19-0180 (issued December 5, 2019).

⁴³ *Id.*; Federal (FECA) Procedure Manual, *supra* note 19 at Chapter 2.1602.5a.

⁴⁴ 20 C.F.R. § 10.607(b); *B.W.*, Docket No. 19-0626 (issued March 4, 2020); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

⁴⁵ *See G.B.*, *supra* note 30; *Leona N. Travis*, 43 ECAB 227, 240 (1991).

⁴⁶ *B.W.*, *supra* note 44.

⁴⁷ *Id.*; *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

⁴⁸ Federal (FECA) Procedure Manual, *supra* note 19 at Chapter 2.1602.5a.

would have created a conflict in medical opinion requiring further development, is not clear evidence of error.⁴⁹

ANALYSIS -- ISSUE 2

The Board finds that, by its July 25, 2018 decision, OWCP properly denied appellant's December 15, 2017 request for reconsideration of the September 16, 2014 decision denying travel reimbursement, finding that it was untimely filed and failed to demonstrate clear evidence of error.

Preliminarily, the Board notes that the last merit decision on the issue of whether OWCP proper denied appellant's request for reimbursement of travel expenses on May 22, 2012 was the Board's decision dated September 16, 2014. By that decision, the Board affirmed a June 10, 2013 OWCP decision. The Board found that OWCP did not abuse its discretion by denying appellant's request for reimbursement of travel expenses. As noted, findings made in prior Board decisions are *res judicata* absent any further review by OWCP, under section 8128 of FECA.⁵⁰

OWCP received appellant's request for reconsideration on December 15, 2017. Because it received appellant's reconsideration request more than a year after the last merit decision dated September 16, 2014, her request was untimely filed, and she must demonstrate clear evidence of error.⁵¹

On reconsideration, appellant asserted that abuse of discretion was established, as the case record was not transmitted to the Board for proper review following her September 19, 2013 appeal. However, she has not submitted any evidence to corroborate this allegation. There is no evidence to support that the Board did not consider all evidence of record when it issued its September 16, 2014 decision. Appellant also contended that OWCP did not follow through on its obligations since, in a June 22, 2015 letter, it indicated that it was reprocessing claims dated May 22, August 1, and 14, 2013, and that claims should be paid in three weeks. However, the Board finds that although OWCP acknowledged that it would reprocess these claims, including for May 22, 2012, such acknowledgement does not constitute acceptance of appellant's request for travel reimbursement. This letter is insufficient to show that the denial of travel reimbursement was erroneous. Appellant further alleged that she was not aware of the recent regulation changes and that OWCP was aware of her new address in Calexico, CA before the May 22, 2012 medical appointment. The Board notes that this argument was considered in its September 16, 2014 decision.⁵²

The term clear evidence of error is intended to represent a difficult standard. It is not enough to show that evidence could be construed so as to produce a contrary conclusion. Instead, the evidence must shift the weight in appellant's favor.⁵³

⁴⁹ *G.B.*, *supra* note 30.

⁵⁰ *Id.*

⁵¹ *Supra* note 49.

⁵² *Supra* note 16; *see G.B.*, *supra* note 30.

⁵³ *R.K.*, Docket No. 19-1474 (issued March 3, 2020).

The Board finds that appellant's request for reconsideration did not show on its face that OWCP committed error when, in its June 10, 2013 decision, it denied authorization for reimbursement of travel expenses on May 22, 2012. Therefore, OWCP properly determined that she failed to demonstrate clear evidence of error in its July 25, 2018 decision.

CONCLUSION

The Board finds this case is not in posture for decision regarding appellant's entitlement to claimed wage-loss compensation during 2012 and 2014. The Board also finds that OWCP properly denied appellant's request for reconsideration of the merits of her schedule award claim, pursuant to 5 U.S.C. § 8128(a). The Board further finds that OWCP properly denied appellant's request for reconsideration as the request was untimely filed and failed to demonstrate clear evidence of error regarding reimbursement of travel expenses.

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2018 decision of the Office of Workers' Compensation Programs is affirmed. The March 15, 2018 decision is affirmed in part and set aside in part, and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: April 29, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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