



of his federal employment, including carrying mail and the satchel. He noted that he first became aware of his conditions and their relationship to factors of his federal employment on February 2, 2016.

In an undated narrative statement, appellant related that on February 2, 2016 he cased his assigned mail route, loaded up his satchel, and put it over his left shoulder, placed the swing of flats on his left forearm and the delivery point sequence mail in his left hand. Shortly thereafter, he reported experiencing pain and numbness in his left arm to his supervisor.

On February 24, 2016 Dr. Michael S. Duffy, an osteopath, reported treating appellant on February 15 and 19, 2016 for left arm and shoulder pain that began on February 2, 2016 while carrying his mail satchel at work. He diagnosed lateral epicondylitis and weakness of lumbosacral spine, left arm and shoulder and performed a lidocaine injection.

In a March 1, 2016 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested factual and medical evidence.

On March 7, 2016 Dr. David Davis, a Board-certified family practitioner, evaluated appellant for left arm and left upper extremity pain that began on February 2, 2016, while carrying mail at work. He diagnosed left elbow pain and returned appellant to work with restrictions.

By decision dated May 23, 2016, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his neck and left arm conditions were causally related to the accepted factors of his federal employment.

In a report dated May 24, 2016, Dr. Sidney H. Levine, a Board-certified orthopedist, noted evaluating appellant on May 12, 2016 for a left elbow and forearm condition. Appellant reported delivering mail on February 2, 2016 and carrying a mailbag weighing approximately 25 pounds across his left shoulder and magazines weighing about 6 pounds on his left forearm when he felt a pinching and a numb sensation throughout the entire left upper extremity. Dr. Levine diagnosed lateral epicondylitis of the left elbow, left carpal tunnel syndrome (CTS), and overuse syndrome of the left upper extremity. He opined that within reasonable medical certainty appellant sustained an injury to his left upper extremity as a result of his work activities performed in the course of his employment. In an undated doctor's first report of occupational injury or illness, Dr. Levine returned appellant to limited duty. In primary treating physician's progress reports dated May 26 and June 9, 2016, he diagnosed other synovitis and tenosynovitis of the hand and sprain of the elbow.

On February 24, 2017 appellant requested reconsideration.

By decision dated April 5, 2017, OWCP denied modification of the May 23, 2016 decision.

In reports dated May 16 and August 4, 2017, Dr. Levine noted examining appellant for persistent right elbow pain. He noted tenderness of the supinator, and decreased sensation of the thumb, index finger, and dorsal radial aspect of the left hand.

On May 26, 2017 appellant requested reconsideration.

By decision dated August 24, 2017, OWCP denied modification of the April 5, 2017 decision.

On January 29, 2018 appellant requested reconsideration. He asserted that, over time, carrying too much mail and trying to keep up with management's expectations caused his work injury. Appellant referenced reports from Dr. Levine in support of his claim.

By decision dated April 16, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

In a supplemental report dated August 14, 2018, Dr. Levine reiterated the history, findings, and diagnoses noted in his May 24, 2016 report. He further noted that the findings on examination and diagnoses were consistent with appellant's account of the injury and he had no prior history of left elbow or left upper extremity injury. Dr. Levine opined that appellant's conditions were causally related to the accepted employment factors.

On August 29, 2018 appellant requested reconsideration.

By decision dated September 13, 2018, OWCP denied modification of the August 24, 2017 decision.

Appellant submitted reports from Dr. Levine dated May 24, 2016, May 16, 2017, and August 14, 2018 and unsigned primary treating physician's progress reports dated May 26 and June 9, 2016, all previously of record.

In a primary treating physician's progress report dated July 11, 2016, Dr. Levine diagnosed complication of surgical and medical care unspecified and pain in elbow. He returned appellant to modified duty. In an attending physician's report (Form CA-20) dated August 15, 2016, Dr. Levine noted improvement in appellant's condition and that he could lift up to 15 pounds.

OWCP received a supplemental report from Dr. Levine, dated November 20, 2018, who noted that the findings on examination were consistent with those of lateral epicondylitis, overuse syndrome, and CTS. Dr. Levine opined that appellant's symptoms arose as a result of his employment and affirmed a causal relationship between appellant's work activities and the injury sustained. He noted that medical treatment was appropriate and necessary. Dr. Levine released appellant from medical care and returned him to regular duty.

In an undated statement entitled "Description of New Documents," appellant reiterated a history of injury and subsequent treatment.

On May 21, 2019 appellant requested reconsideration.

OWCP, by decision dated June 13, 2019, denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a), finding that the request neither raised substantive legal questions, nor included relevant and pertinent new evidence.

In a statement dated September 9, 2019, appellant reiterated the history of injury and subsequent medical treatment. He asserted that his injury was work related and referenced a November 20, 2018 report from Dr. Levine in support of his claim.

On September 16, 2019 appellant again requested reconsideration.

By decision dated October 30, 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.<sup>2</sup> 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.<sup>3</sup> Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).<sup>4</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>5</sup>

When a request for reconsideration is untimely, OWCP undertakes a limited review to determine whether the request presents clear evidence that OWCP's most recent merit decision was in error.<sup>6</sup> Its procedures state 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, if the claimant's request for reconsideration shows "clear evidence of error" on the part of OWCP.<sup>7</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>8</sup> The evidence must be positive, precise and explicit and must manifest on its face that OWCP committed an error.<sup>9</sup> Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.<sup>10</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>11</sup> To demonstrate clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or establish a

---

<sup>2</sup> See 5 U.S.C. § 8128(a); *M.E.*, Docket No. 18-1497 (issued March 1, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

<sup>3</sup> 20 C.F.R. § 10.607(a).

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

<sup>5</sup> *F.N.*, Docket No. 18-1543 (issued March 6, 2019); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>6</sup> *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *Leon J. Modrowski*, 55 ECAB 196 (2004); *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>7</sup> 20 C.F.R. § 10.607(b) provides: "OWCP will consider an untimely application for reconsideration 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." See *W.R.*, Docket No. 18-1042 (issued February 12, 2019); see *Gladys Mercado*, 52 ECAB 255 (2001).

<sup>8</sup> *F.N.*, *supra* note 5; see *Darletha Coleman*, 55 ECAB 143 (2003); *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>9</sup> *M.E.*, *supra* note 2; see *Pasquale C. D'Arco*, 54 ECAB 560 (2003); *Leona N. Travis*, 43 ECAB 227 (1991).

<sup>10</sup> See *Leon J. Modrowski*, *supra* note 6; *Jesus D. Sanchez* *supra* note 6.

<sup>11</sup> See *Leona N. Travis*, *supra* note 9.

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.<sup>12</sup>

The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP such that OWCP abused its discretion in denying merit review in the face of such evidence.<sup>13</sup>

### ANALYSIS

The Board finds that OWCP properly denied appellant's request of reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

OWCP received appellant's request for reconsideration on September 16, 2019, which was more than one year after OWCP's September 13, 2018 merit decision, which had denied modification of the prior decision dated April 16, 2018. The Board thus finds that appellant's request for reconsideration was untimely filed. As appellant's request was untimely filed, he must demonstrate clear evidence of error on the part of OWCP.<sup>14</sup>

The Board further finds that appellant has not demonstrated clear evidence of error. The underlying issue is whether OWCP properly denied his occupational disease claim because the evidence of record was insufficient to establish that his left arm condition was causally related to the accepted factors of his federal employment. The Board finds that the arguments and evidence submitted by appellant in support of his request for reconsideration did not raise a substantial question as to the correctness of the denial of his claim.

In support of his untimely request for reconsideration, appellant submitted a statement dated September 9, 2019, asserting that he developed a left arm condition due to carrying a mail satchel while in the performance of duty. The Board finds that his narrative statement merely reiterates the arguments previously of record. Appellant also submitted a medical report from Dr. Levine dated November 20, 2018. This evidence is duplicative of evidence previously considered by OWCP on June 13, 2019 and found insufficient. Appellant did not otherwise explain how the resubmission of this evidence raised a substantial question regarding the correctness of OWCP's September 13, 2018 decision.

The Board has held that the term clear evidence of error is intended to represent a difficult standard. None of the evidence submitted demonstrates on its face that OWCP committed an error in denying appellant's claim for an occupational disease in its September 13, 2018 decision. The

---

<sup>12</sup> *W.K.*, Docket No. 18-1260 (issued February 5, 2019); *Leon D. Faidley, Jr.*, *supra* note 5.

<sup>13</sup> See *George C. Vernon*, 54 ECAB 319 (2003); *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

<sup>14</sup> 20 C.F.R. § 10.607(b).

Board thus finds that the evidence and arguments submitted on reconsideration do not demonstrate clear evidence of error on the part of OWCP in its September 13, 2018 merit decision.<sup>15</sup>

On appeal appellant asserts that he timely filed his reconsideration request and had a certified return receipt proving that his reconsideration was received and signed for on September 13, 2019. However, as the Board found and explained above, appellant's request for reconsideration was untimely filed. Appellant also asserts that he submitted sufficient evidence to support that he developed a left arm condition causally related to factors of his employment. The Board notes that it does not have jurisdiction over the merits of his claim.

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim as it was untimely filed and failed to demonstrate clear evidence of error.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 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

---

<sup>15</sup> *W.R.*, *supra* note 7.