

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

C.S., Appellant)	
)	
and)	Docket No. 20-1075
)	Issued: December 31, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
New Orleans, LA, Employer)	
)	

Appearances:
Anita Lewallen, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On April 25, 2020 appellant, through her representative, filed a timely appeal from an April 8, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated December 29, 2017, to 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 over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

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

On August 26, 2011 appellant, then a 39-year-old letter carrier, filed an occupational disease claim (Form CA-2) which OWCP accepted for generalized anxiety disorder as a result of stress and anxiety. She initially stopped work on August 26, 2011 and returned on September 3, 2011. OWCP paid appellant intermittent wage-loss compensation between August 26, 2011 and November 10, 2012. She returned to full-duty work on November 12, 2012 with no restrictions.

Appellant subsequently submitted claims for compensation (Form CA-7) claiming intermittent disability from November 17 to December 3, 2012 and total disability beginning December 12, 2012. By decision dated February 27, 2013, OWCP denied appellant's Form CA-7 claims for compensation for disability during the periods November 17 to December 3, 2012 and December 12, 2012 and continuing.

On April 4, 2013 appellant requested reconsideration and submitted additional evidence. By decision dated June 12, 2013, OWCP denied modification of the prior decision, finding that the medical evidence of record was insufficient to establish the claimed period of disability.

On June 13, 2014 appellant, through her then-representative, requested reconsideration. Appellant's representative submitted time and attendance records for appellant and D.P, appellant's supervisor. By decision dated January 12, 2015, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to present clear evidence of error.

Appellant appealed the January 12, 2015 decision to the Board. By decision dated December 17, 2015, the Board affirmed OWCP's January 12, 2015 decision.³

By decision dated December 7, 2017, OWCP vacated the January 12, 2015 decision and reopened the case for merit review. By merit decision dated December 29, 2017, it denied modification of its February 27 and June 12, 2013 decisions.

On November 28, 2018 appellant requested reconsideration. In a statement dated November 28, 2018, she asserted that OWCP failed to issue a new merit decision after it vacated the January 12, 2015 decision.

³ Docket No. 15-0739 (issued December 17, 2015).

By decision dated October 16, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).⁴

On January 9, 2020 appellant, through her representative, again requested reconsideration. She asserted that OWCP erred in its "nonmerit decision dated December 29, 2017." The representative noted that new arguments made in the June 13, 2014 request for reconsideration, were sufficient to warrant modification or reversal of the June 12, 2013 decision. She indicated that time and attendance records for her supervisor, D.P., and herself uploaded into her file for consideration by OWCP established that D.P. was assigned to work in her duty station during the period she claimed disability compensation, November 2012 through March 2013. The representative asserted that as D.P. was working in the same duty station as appellant, and she could not have possibly worked during that period because she would have been in direct violation of her doctor's orders. The representative indicated that OWCP erred in their evaluation of the time and attendance records provided for appellant and D.P.

By decision dated April 8, 2020, 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,⁵ OWCP has the discretion to reopen a case for further merit review.⁶ 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.⁷ 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).⁸ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁹

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

⁴ Appellant submitted a written authorization dated November 3, 2019 for A.L. to act as her authorized representative in her case. She also submitted a December 9, 2019 request for a copy of the case file. In a letter dated December 18, 2019, OWCP acknowledged appellant's authorized representative. On December 20, 2019 it responded to appellant's representative's request for a copy of her case.

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ *Id.* at § 8128(a); *P.J.*, Docket No. 19-1479 (issued May 8, 2020); *J.W.*, Docket No. 18-0703 (issued November 14, 2018).

⁷ 20 C.F.R. § 10.607(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

⁹ *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

limited review to determine whether it demonstrates clear evidence of error.¹⁰ If a request demonstrates clear evidence of error, it will reopen the case for merit review.¹¹

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹² The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.¹³ Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹⁴ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁵ 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.¹⁶ 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.¹⁷

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁸ The claimant must present evidence which on its face shows that OWCP made an error. 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 insufficient to demonstrate clear evidence of error.¹⁹ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.²⁰

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.

¹⁰ 20 C.F.R. § 10.607(b); *C.M., id.*

¹¹ *See also id.* at § 10.607(b); *supra* note 8 at Chapter 2.1602.5 (February 2016).

¹² *J.S.*, Docket No. 20-0337 (issued July 15, 2020).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See C.M., supra* note 9.

¹⁸ *Supra* note 8 at Chapter 2.1602.4(b) (February 2016).

¹⁹ *C.M., supra* note 9.

²⁰ *Id.*

The most recent merit decision was OWCP's December 29, 2017 decision, which found that the evidence of record was insufficient to establish intermittent disability from November 17 through December 3, 2012, and total disability beginning December 12, 2012. As appellant's request for reconsideration was not received by OWCP until January 9, 2020, more than one year after the December 29, 2017 decision, it was untimely filed.²¹ Consequently, appellant must demonstrate clear evidence of error by OWCP in denying the claim.

On reconsideration appellant's representative reiterated arguments previously made and considered, asserting that OWCP erred in their evaluation of the time and attendance records provided for appellant and D.P., which established that D.P. was assigned to work in her duty station during the period she claimed disability compensation, November 2012 through March 2013. The representative asserted that as D.P. was working in the same duty station as appellant, appellant could not have possibly worked during that period because she would have been in direct violation of her doctor's orders. The term clear evidence is a difficult standard.²² It is not enough to show that the evidence could be construed to produce a contrary conclusion.²³ The arguments proffered do not manifest on their face that OWCP committed an error in denying appellant's claim for disability compensation. Appellant has raised a substantial question as to the correctness of OWCP's decision. Thus, to appellant has not demonstrated clear evidence of error.²⁴

CONCLUSION

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

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

²² *R.M.*, Docket No. 18-1393 (issued February 12, 2019).

²³ *W.D.*, Docket No. 19-0062 (issued April 15, 2019).

²⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 31, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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