

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances set forth in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On April 2, 2003 appellant, then a 35-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she developed right shoulder pain and difficulty breathing when lifting and pulling objects while in the performance of duty. She indicated that she first became aware of the condition and its relation to factors of her federal employment on November 9, 2002. Appellant stopped work on March 20, 2003 and did not return.⁴

By decision dated June 30, 2003, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish a diagnosed condition causally related to the accepted factors of her federal employment.

On April 23, 2004 appellant requested reconsideration. She alleged that her employment was terminated after she walked off the job when she was harassed by a coworker, but that the termination was later downgraded to a warning. Appellant also argued that she was depressed and in pain due to her employment injury.

By decision dated April 30, 2004, OWCP denied appellant's request for reconsideration.

On June 28, 2004 appellant filed an appeal with the Board. By decision dated December 17, 2004, the Board affirmed OWCP's June 30, 2003 and April 30, 2004 decisions.⁵

On December 12, 2017 and February 15, 2018 appellant again requested reconsideration. She indicated that she was the victim of improper acts by employing establishment officials.

OWCP subsequently received a July 6, 2012 work restriction form from a physician, with an illegible signature, who indicated that appellant was temporarily totally disabled. It also received a May 6, 2004 magnetic resonance imaging (MRI) scan and copies of physical therapy reports dated March 24, August 27, September 4, 2010 and August 26, 2011.

Appellant also submitted: a copy of a July 25, 2006 application for Social Security benefits; an August 1, 2016 e-mail confirmation of an online police report; a detective's business card; e-mail requests for public records; photographs of individuals in an automobile which appellant alleged was stolen from her; a photograph of an individual wielding a knife; a printout from an attorney contacting her regarding a robbery complaint; a print out of rights of crime victims and witnesses; a letter dated December 9, 2014 from an attorney for the employing establishment, advising appellant that there was no monetary decision in her favor; and a copy of

³ Docket No. 04-1709 (issued December 17, 2004).

⁴ Appellant's supervisor noted that appellant's employment was terminated for reasons unrelated to her compensation claim.

⁵ *Supra* note 3.

a March 20, 2003 letter, advising appellant that she was being removed from employment with the employing establishment.

By decision dated March 23, 2018, 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.⁶ This discretionary authority, however, is subject to certain restrictions.⁷ OWCP's regulations⁸ establish a one-year time limitation for requesting reconsideration, which begins on the date of the original OWCP merit decision. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.⁹ Timeliness is determined by the document receipt date, the received date in OWCP's integrated Federal Employees' Compensation System (iFECS).¹⁰

When a request for reconsideration is untimely, OWCP undertakes a limited review to determine whether the application demonstrates clear evidence that OWCP's final merit decision was in error.¹¹ OWCP's 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, if the claimant's request for reconsideration demonstrates clear evidence of error on the part of OWCP.¹² In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹³

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹⁴ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.¹⁵ Evidence which does not raise a

⁶ See 5 U.S.C. § 8128(a); *L.H.*, Docket No. 19-1174 (issued December 23, 2019).

⁷ 20 C.F.R. § 10.607(a).

⁸ *V.G.*, Docket No. 19-0038 (issued June 18, 2019); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); 20 C.F.R. § 10.607(a); see *Alberta Dukes*, 56 ECAB 247 (2005).

⁹ *J.W.*, *id.*; *Robert F. Stone*, 57 ECAB 292 (2005).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

¹¹ *C.V.*, Docket No. 18-0751 (issued February 22, 2019); *B.W.*, Docket No. 10-0323 (issued September 2, 2010); *M.E.*, 58 ECAB 309 (2007); *Leon J. Modrowski*, 55 ECAB 196 (2004); *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

¹² See *D.G.*, Docket No. 18-1038 (issued January 23, 2019); *Gladys Mercado*, 52 ECAB 255 (2001).

¹³ *V.G.*, *supra* note 8; see *E.P.*, Docket No. 18-0423 (issued September 11, 2018); *Nelson T. Thompson*, 43 ECAB 919 (1992).

¹⁴ *C.V.*, *supra* note 11; *Darletha Coleman*, 55 ECAB 143 (2003); *Dean D. Beets*, 43 ECAB 1153 (1992).

¹⁵ *E.P.*, *supra* note 13; *Pasquale C. D'Arco*, 54 ECAB 560 (2003); *Leona N. Travis*, 43 ECAB 227 (1991).

substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹⁶ It is not enough merely to demonstrate that the evidence could be construed so as to produce a contrary conclusion.¹⁷ 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.¹⁸ 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 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.¹⁹ 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.²⁰

ANALYSIS

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

The last merit decision in this case was rendered by the Board on December 17, 2004. As appellant requested reconsideration on December 12, 2017 and February 8, 2018, more than one year after the December 17, 2004 merit decision, her reconsideration requests were untimely filed.²¹ Consequently, appellant must demonstrate clear evidence of error by OWCP in the denial of her claim for compensation.

The Board finds that appellant has not submitted positive, precise, and explicit evidence manifesting on its fact that OWCP committed an error in the denial of her claim.²²

OWCP denied appellant's occupational disease claim as appellant had not established that lifting and pulling objects at work while performing her mail processing duties caused any diagnosed medical condition. On reconsideration appellant related her unsubstantiated allegations regarding improper acts by employing establishment officials which allegedly occurred years after her 2003 injury, outside of work and which did not involve performance of duty issues. These allegations are not relevant to the issue of whether she sustained a diagnosed physical condition causally related to the accepted employment factors of lifting and pulling objects as a mail

¹⁶ *L.B.*, Docket No. 19-0635 (issued August 23, 2019); *V.G.*, *supra* note 8.

¹⁷ *V.G.*, *supra* note 8; *Leona N. Travis*, *supra* note 15.

¹⁸ *L.B.*, *supra* note 16; *Nelson T. Thompson*, *supra* note 13.

¹⁹ *D.G.*, *supra* note 12; *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

²⁰ *See C.V.*, *supra* note 11; *George C. Vernon*, 54 ECAB 319 (2003).

²¹ *Supra* note 12.

²² *See S.P.*, Docket No. 17-1708 (issued February 23, 2018).

processing clerk. The Board notes that these arguments do not show that OWCP committed error in the denial of her claim.²³

OWCP also received: a copy of a July 25, 2006 application for Social Security benefits; an August 1, 2016 e-mail confirmation of an online police report; a detective's business card; e-mail requests for public records; photographs of individuals in a car which appellant alleged was stolen from her; a photograph of an individual wielding a knife; a printout from an attorney contacting her regarding a robbery complaint; a print out of rights of crime victims and witnesses; a letter dated December 9, 2014 from an attorney for the employing establishment, advising appellant that there was no monetary decision in her favor; and a copy of a March 20, 2003 letter, advising appellant that she was being removed from employment with the employing establishment. Appellant also submitted medical evidence which included: a copy of a July 6, 2012 report from a physician with an illegible signature, who indicated that appellant was temporarily totally disabled; a May 6, 2004 MRI scan; and copies of physical therapy reports dated March 24, August 27, September 4, 2010 and August 26, 2011. This evidence is irrelevant to the underlying issue as it does not establish that appellant has a medical condition causally related to the accepted factors of her federal employment, and therefore does not establish that OWCP committed clear evidence of error in the denial of her claim.²⁴

The Board has previously explained that clear evidence of error is intended to represent a difficult standard. The submission of a detailed, well-rationalized medical report which, if submitted before the merit decision was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.²⁵ For these reasons, appellant has not demonstrated clear evidence of error by OWCP in its last merit decision dated June 30, 2003, which the Board affirmed on December 17, 2004.

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

²³ See *supra* note 14.

²⁴ See *M.P.*, Docket No. 19-0674 (issued December 16, 2019).

²⁵ *Supra* note 9; *James R. Mirra*, 56 ECAB 738 (2005).

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2020
Washington, DC

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

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

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