

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On January 18, 2018 appellant, then a 55-year-old aircraft mechanic, filed a traumatic injury claim (Form CA-1) alleging that on November 1, 2017 he sustained a lower back injury while in the performance of duty. He asserted that he heard something "pop" in the right side of his lower back when he sat down to remove screws from floor boards and that he then had difficulty getting back up. Appellant did not stop work.

In support of his claim, appellant submitted a job description for the aircraft mechanic position.

In a development letter dated February 1, 2018, OWCP requested that appellant submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how the claimed November 1, 2017 employment incident caused or aggravated a medical condition. It provided a questionnaire for his completion which posed questions regarding the claimed employment incident and his receipt of medical treatment. In a separate letter of the even date, OWCP also requested additional information from the employing establishment. It afforded both appellant and the employing establishment 30 days to respond, but neither party responded within the afforded period.

By decision dated March 8, 2018, OWCP accepted that the November 1, 2017 incident had occurred, as alleged. However, it denied appellant's claim finding that he had not established the medical component of fact of injury because he had not submitted medical evidence containing a medical diagnosis in connection with the accepted November 1, 2017 employment incident. OWCP concluded, therefore, that the "requirements have not been met for establishing that you sustained an injury as defined by the FECA."

On March 25, 2019 appellant requested reconsideration of the March 8, 2018 OWCP decision.

Appellant submitted a November 1, 2017 emergency room report from Dr. David Kocherla, Board-certified in emergency medicine, who advised that appellant complained of acute midline and right-sided low back pain radiating down the back of his right thigh. He reported that his symptoms began at work on that date, noting that he was leaning over and felt a sharp pain when he went to stand up.³ Dr. Kocherla noted findings on physical examination of midline and right-sided lumbar tenderness to palpation, positive pain with right straight leg raise testing, and limited range of motion of the right leg secondary to pain. He diagnosed low back strain and right-

³ Another portion of the report noted that appellant complained of right hip pain after he sat down at work on November 1, 2017 and heard a "pop."

sided sciatica, and prescribed pain medication. Appellant submitted administrative documents from his November 1, 2017 emergency room visit.

Appellant also submitted a November 1, 2017 report of x-rays of his lumbar spine which contained an impression of no acute finding.

By decision dated April 26, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim, 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.⁴ 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.⁵ 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).⁶ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁷

OWCP may not deny a reconsideration request solely because it was untimely filed. When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error.⁸ If a request demonstrates clear evidence of error, OWCP will reopen the case for merit review.⁹

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹⁰ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.¹¹ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate

⁴ 5 U.S.C. § 8128(a); *see also A.B.*, Docket No. 19-1539 (issued January 27, 2020); *W.C.*, 59 ECAB 372 (2008).

⁵ 20 C.F.R. § 10.607(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

⁷ *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).

⁸ *See* 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

⁹ *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 6 at Chapter 2.1602.5 (February 2016).

¹⁰ *A.A.*, Docket No. 19-1219 (issued December 10, 2019); *J.F.*, Docket No. 18-1802 (issued May 20, 2019); *J.D.*, Docket No. 16-1767 (issued January 12, 2017); *Dean D. Beets*, 43 ECAB 1153 (1992).

¹¹ *J.D.*, Docket No. 19-1836 (issued April 6, 2020); *Leon N. Travis*, 43 ECAB 227 (1999).

clear evidence of error.¹² It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹³ 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.¹⁴ 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.¹⁵

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁶ The claimant must present evidence which on its face shows that OWCP made an error.¹⁷ 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.¹⁸ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁹

ANALYSIS

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

The Board finds that OWCP properly determined that appellant failed to file a timely request for reconsideration. An application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.²⁰ The last merit decision was OWCP's March 8, 2018 decision which denied appellant's traumatic injury claim. As appellant's request for reconsideration was not received by OWCP until March 25, 2019, more than one year after the March 8, 2018 decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in denying his traumatic injury claim.²¹

¹² *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

¹³ *T.N.*, Docket No. 18-1613 (issued April 29, 2020).

¹⁴ *Id.*

¹⁵ *J.M.*, Docket No. 19-1842 (issued April 23, 2020).

¹⁶ *See supra* note 6 at Chapter 2.1602.5(a) (February 2016); *see also J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹⁷ *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

¹⁸ *Id.*

¹⁹ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

²⁰ *See supra* note 5.

²¹ *See supra* notes 8 and 9.

The Board further finds that appellant has not demonstrated clear evidence of error on the part of OWCP in its last merit decision dated March 8, 2018. OWCP denied his traumatic injury claim because he had not submitted medical evidence containing a medical diagnosis in connection with the accepted November 1, 2017 incident. The evidence submitted failed to raise a substantial question concerning the correctness of OWCP's March 8, 2018 decision.²²

Appellant submitted a November 1, 2017 emergency room report from Dr. Kocherla who indicated that appellant reported experiencing acute midline and right-sided low back pain radiating down the back of his right thigh after an incident at work on even date. Dr. Kocherla noted findings on examination and diagnosed low back strain and right-sided sciatica. The findings of November 1, 2017 x-rays of appellant's lumbar spine contained an impression of no acute finding. Appellant also submitted administrative documents from his November 1, 2017 emergency room visit. The Board notes, however, that Dr. Kocherla's report and the diagnostic testing report did not provide a clear opinion on the cause of the diagnosed conditions and appellant failed to explain how the evidence submitted raised a substantial question regarding the correctness of OWCP's March 8, 2018 decision. In addition, the submitted administrative documents would not demonstrate error with respect to the medical issue considered in that decision, *i.e.*, whether appellant submitted sufficient medical evidence to establish a November 1, 2017 employment injury.

As noted, the term clear evidence is a difficult standard and it is not enough to show that the evidence could be construed to produce a contrary conclusion.²³ None of the evidence submitted by appellant in connection with his untimely reconsideration request manifests on its face that OWCP committed an error in denying his traumatic injury claim. Appellant has not submitted evidence of sufficient probative value to raise a substantial question as to the correctness of OWCP's decision.²⁴ Thus, the evidence of record is insufficient to demonstrate clear evidence of error.

On appeal appellant asserts that OWCP improperly denied his claim for a traumatic injury and indicated that he has received several bills relating to treatment for his claimed injury that have not been paid. As noted, however, the Board does not have jurisdiction over the merits of the claim. Appellant has not presented evidence or argument that raises a substantial question as to the correctness of OWCP's March 8, 2018 decision for which review is sought.²⁵

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 March 8, 2018 decision. Accordingly, the

²² See *P.T.*, Docket No. 18-0494 (issued July 9, 2018).

²³ See *supra* notes 13 and 16; see also *W.D.*, Docket No. 19-0062 (issued April 15, 2019); *R.M.*, Docket No. 18-1393 (issued February 12, 2019).

²⁴ See *supra* notes 11 and 12.

²⁵ *R.T.*, Docket No. 14-0779 (issued August 22, 2014).

Board finds that OWCP properly denied his reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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