



## 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 January 13, 2000 appellant, then a 44-year-old manual distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome as a result of performing repetitive job duties while in the performance of duty. She noted that she first became aware of her condition on December 20, 1999 and realized its relationship to her federal employment on December 27, 1999. Appellant did not stop work, but returned to a limited-duty position. OWCP accepted the claim for bilateral carpal tunnel syndrome on February 22, 2000.

On April 29, 2015 OWCP referred appellant for a second opinion to Dr. David Lotman, a Board-certified orthopedist. In a report dated May 22, 2015, Dr. Lotman noted examination of the right hand and wrist demonstrated prominence of the A1 pulley of the thumb without triggering. With regard to the left hand and wrist examination revealed enlargement of the A1 pulley over the left thumb, limited flexion, and decreased sensation. Dr. Lotman diagnosed bilateral carpal tunnel syndrome resolved, right cubital tunnel syndrome, and possible bilateral ulnar neuritis of the wrist. He opined that appellant's accepted conditions of bilateral carpal tunnel syndrome resolved and she had no continuing residuals. Dr. Lotman indicated that appellant could not perform her customary duties because of the presence of pathology in the ulnar tunnel/Guyon's canal at the wrist which would be subjected to the same irritations from occupational activities as her prior carpal tunnel syndrome. He advised that her overall work capacity was limited by ulnar neuritis, but she could work in a sedentary capacity. In a work capacity evaluation (Form OWCP-5c), Dr. Lotman noted that appellant could not work in her usual capacity due to ulnar neuritis, but could return to medium strength level.

On June 29, 2015 OWCP proposed to terminate all benefits finding that Dr. Lotman's May 22, 2015 report represented the weight of the medical evidence to establish no continuing residuals of her work-related conditions.

In a report dated July 7, 2015, Dr. Vega noted appellant's continued complaints of pain in the median nerves and wrists. He performed a corticosteroid injection. On July 14, 2015 Dr. Vega reviewed Dr. Lotman's report and disagreed with his findings. He opined that appellant continued to have residuals of carpal tunnel with a positive Tinel's sign and EMG findings. Dr. Vega noted findings of neuropathy in the ulnar tunnel which was not work related.

In a decision dated August 25, 2015, OWCP terminated appellant's compensation benefits effective the same date. It based its decision on the May 22, 2015 report of Dr. Lotman, OWCP's referral physician, who opined that her accepted work-related conditions resolved and she did not have any residuals of her work-related injury. He noted that appellant could return to work with restrictions pertaining to ulnar neuritis.

On March 1, 2017 appellant, through counsel, requested that her claim be expanded to include bilateral ulnar neuritis of the wrist. Counsel asserted that Dr. Lotman had opined that this condition was causally related to her accepted employment factors in his May 22, 2015 report.

In a letter dated March 13, 2017, OWCP indicated that a decision was issued on August 25, 2015 terminating appellant's wage-loss compensation and medical benefits.

On December 27, 2017 appellant, through counsel, requested reconsideration of OWCP's August 25, 2015 termination decision. Counsel asserted that it was legal error for OWCP to not issue a decision on the request to expand the accepted conditions. Appellant further alleged that it was a mistake of fact that OWCP did not accept bilateral ulnar neuritis as Dr. Lotman attributed this condition to performing her work duties. She sought expansion of her claim to include bilateral ulnar neuritis of the wrists.

By decision dated January 22, 2018, OWCP denied appellant's December 27, 2017 reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

### **LEGAL PRECEDENT**

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.<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> 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.<sup>5</sup>

OWCP may not deny a request for reconsideration solely on the grounds that it was untimely filed. When a request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether the request demonstrates clear evidence of error.<sup>6</sup> OWCP's 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 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. The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence that does not raise a

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<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> 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

<sup>6</sup> See 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

<sup>7</sup> *Id.* at § 10.607(b); Federal (FECA) Procedure Manual, *supra* note 4 at Chapter 2.1602.5(a) (February 2016).

substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error. It is not enough to merely show that the evidence could be construed so as to produce a contrary conclusion. 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. 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.<sup>8</sup>

OWCP's procedures note and the Board has held that the term "clear evidence of error" is intended to represent a difficult standard. The claimant must present evidence which on its face shows that OWCP made an error (for example, proof that a schedule award was miscalculated). 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.<sup>9</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>10</sup>

### ANALYSIS

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

As noted above, OWCP's regulations provide that the one-year time limitation period for requesting reconsideration begins on the date of the last merit decision.<sup>11</sup> Because appellant's request for reconsideration was received on December 27, 2017, more than one year after the August 25, 2015 merit decision, OWCP properly determined that it was untimely filed.<sup>12</sup> Therefore, appellant must demonstrate clear evidence of error on the part of OWCP regarding the August 25, 2015 decision.

The Board finds that appellant has not demonstrated clear evidence of error on the part of OWCP. Counsel asserted that it was legal error for OWCP to not issue a decision on the request to expand the accepted conditions and that it was a mistake of fact that OWCP did not accept bilateral ulnar neuritis based on Dr. Lotman's report. However, these arguments do not demonstrate clear evidence of error as they do not raise a substantial question as to the correctness of OWCP's most recent merit decision which terminated appellant's wage-loss compensation and benefits for the accepted bilateral carpal tunnel syndrome.

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<sup>8</sup> *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>9</sup> Federal (FECA) Procedure Manual, *supra* note 6 at Chapter 2.1602.5(a) (February 2016); *J.S.*, Docket No. 16-1240 (issued December 1, 2016).

<sup>10</sup> *See D.S.*, Docket No. 17-0407 (issued May 24, 2017).

<sup>11</sup> 20 C.F.R. § 10.607(a).

<sup>12</sup> *Id.* at § 10.607(a) (2011).

The Board thus finds that appellant's reconsideration request was untimely filed and failed to demonstrate clear evidence of error.

On appeal counsel reiterates that OWCP erred in not expanding appellant's claim to include bilateral ulnar neuritis and that it was legal error for OWCP to not issue a decision on the request to expand the accepted conditions. As explained above, the Board does not have jurisdiction over the merits of the claim and OWCP properly determined appellant's untimely reconsideration request failed to demonstrate clear evidence of error.

### **CONCLUSION**

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.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 22, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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