

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

R.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 19-1474
Issued: March 3, 2020**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 28, 2019 appellant filed a timely appeal from an April 22, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated January 23, 2018, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

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 30, 2017 appellant, then a 39-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury or medical condition due to factors

¹ 5 U.S.C. § 8101 *et seq.*

of her federal employment. She noted that she first became aware of her condition on March 1, 2016 and first realized that her condition was caused or aggravated by factors of her federal employment on August 2, 2017. Appellant indicated that documentation and a statement were pending when asked to explain the nature of her disease or illness and the relationship of her condition to her federal employment. She did not stop work.

An August 10, 2017 duty status report (Form CA-17), with an illegible signature, provided that appellant was experiencing pain in her right arm and shoulder and diagnosed a rotator cuff injury.

In an August 19, 2017 e-mail, appellant's supervisor, C.G., indicated that appellant was constantly videotaping herself and another manager and that she had been doing so over the past week. She noted that appellant refused to perform her work duties and ignored instructions to do so as she explained that she was being harassed and that she felt unsafe. C.G. described appellant's behavior as "completely uncontrollable and delusional in her perception of reality." She explained that she placed appellant on off-duty/nonpay status for insubordination. In a response to C.G.'s e-mail, R.F., provided that a manager had been recording appellant and that her placement on off-duty/nonpay status was improper and not valid and should be rescinded immediately.

In a development letter dated December 5, 2017, OWCP informed appellant that the evidence of record was insufficient to establish her occupational disease claim. It noted that she had not indicated the nature of her condition nor had she explained the relationship to her federal employment. OWCP advised appellant of the type of medical and factual evidence needed and provided a questionnaire for her completion. It afforded her 30 days to submit the necessary evidence. OWCP received no further evidence.

By decision dated January 23, 2018, OWCP denied appellant's occupational disease claim finding that the evidence of record was insufficient to establish that she sustained an injury in the performance of duty, as no clarifying statement regarding the duties she believed that caused or aggravated her condition had been submitted. It also noted that she had not submitted medical evidence containing a medical diagnosis in connection with her claim. As such, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

Appellant submitted medical evidence dated from March 1, 2016 to August 8, 2017 from multiple physicians which detailed her symptoms of anxiety, gastrointestinal issues, abdominal pain, and migraines and tension headaches related to stress she received from her supervisor at work. The medical reports noted her diagnosis of acute stress disorder.

In an April 5, 2017 witness statement, A.H., appellant's coworker, reported that on April 3, 2017 he saw a supervisor approach appellant, get face-to-face with her and start yelling at her before walking away. In a statement of that same date, C.C., another coworker, who provided that on April 3, 2017 he heard the same supervisor yell "liar" or "big liar." He explained that he was not sure who the supervisor was talking to, but heard the statement very clearly.

In an August 8, 2017 e-mail, appellant provided a partially legible witness statement from D.E., her coworker. D.E. provided that on different occasions he witnessed management hide behind all-purpose containers and record her. He explained that management instructed appellant

to not greet other carriers. D.E. also explained that he has observed management distract her by setting up their base of operation next to her. He provided that he observed visible stress on appellant based on her face and body language.

In a September 12, 2017 letter, appellant described multiple instances dating from March 5, 2016 to August 20, 2017 in which she alleged that she was harassed by management and caused to experience stressful situations. She indicated that the behavior of her managers was inappropriate and illegal and was the direct trigger for her acute stress disorder and anxiety. Appellant also described an August 2, 2017 incident with management and a postmaster in which she sustained an injury to her shoulder and another anxiety attack when a satchel weighing in excess of 35 pounds was dropped on her shoulder.²

In an October 5, 2017 statement to management, appellant indicated that she submitted her Form CA-2 to management on August 30, 2017 and that it changed the answers and personal information on the form before submitting it to labor relations. She requested that the accusation be investigated.

In an October 23, 2017 statement to her management, appellant explained that it was her third request for a copy of management's portion of her August 30, 2017 Form CA-2. She further explained that it had been over 45 days and she had not received confirmation from OWCP that it had received her claim.

On September 25, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In an attached statement, she asserted that her physicians and all of her medical examinations had made it abundantly clear that her physical ailments were a direct result of her being a mail carrier for 20 years. Appellant explained that she believed that management interfered with the approval of her claim for personal reasons. She referenced an August 2, 2017 traumatic injury that aggravated a worsening right shoulder condition she developed from carrying her satchel for 20 years. Appellant also explained that the evidence submitted by her manager was disciplinary action decided in her favor and documentation of events that occurred before her date of injury.³

By decision dated November 5, 2018, OWCP's Branch of Hearings and Review denied appellant's hearing request, finding that she was not entitled to a hearing as a matter of right as she did not submit her hearing request within 30 days of OWCP's January 23, 2018 decision. In exercising its discretion, it determined that the issue in the case could be equally well addressed with a request for reconsideration, accompanied by additional evidence not previously of record establishing that she sustained an injury in the performance of duty, as alleged.

² Appellant filed a separate claim for a traumatic injury (Form CA-1) claiming a right shoulder injury from the August 2, 2017 employment incident. That claim was assigned OWCP File No. xxxxxx509.

³ The Board notes that the attached statement from appellant referenced her separate Form CA-1 in relation to an August 2, 2017 employment incident and not her Form CA-2.

On April 15, 2019 appellant requested reconsideration of OWCP's January 23, 2018 decision.⁴

By decision dated April 22, 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.⁵ 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.⁶ The one-year period for requesting reconsideration begins on the date of the original OWCP decision, but the right to reconsideration within one year also accompanies any subsequent merit decision on the issues, including any merit decision by the Board.⁷ Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (IFECS)).⁸ The Board has found that the imposition of the one-year limitation does not constitute an abuse of the discretionary authority granted OWCP under section 8128(a) of FECA.⁹

OWCP may not deny a request for reconsideration solely because the application was not timely filed. When a request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether the application demonstrates clear evidence of error.¹⁰ OWCP 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 demonstrates clear evidence of error on the part of OWCP.¹¹

To demonstrate clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflicting 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.¹² The Board

⁴ Appellant's appeal form identified a July 18, 2018 decision; however, OWCP did not issue a decision on this date. The only merit decision of record was the decision issued on January 23, 2018.

⁵ 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁶ 20 C.F.R. § 10.607(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4a (February 2016).

⁸ *Id.* at Chapter 2.1602.4(b) (February 2016).

⁹ *See R.L.*, Docket No. 18-0496 (issued January 9, 2019).

¹⁰ *See* 20 C.F.R. § 10.607(b); *G.G.*, Docket No. 18-1074 (issued January 7, 2019).

¹¹ *Id.* at § 10.607(b); *supra* note 7 at Chapter 2.1602.5(a) (February 2016).

¹² *G.G.*, *supra* note 10.

notes that clear evidence of error is intended to represent a difficult standard.¹³ Evidence that 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 establish that the evidence could be construed so as to produce a contrary conclusion.¹⁵ This entails a limited review by OWCP of the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.¹⁶ In this regard, the Board will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹⁷ The Board makes an independent determination as to whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁸

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.

A request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.¹⁹ As appellant's request for reconsideration was not received until April 15, 2019, more than one year after the issuance of its January 23, 2018 merit decision, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in its January 23, 2018 decision.²⁰

The Board further finds that appellant has not demonstrated clear evidence of error on the part of OWCP in issuing its January 23, 2018 decision. Appellant failed to submit the type of positive, precise, and explicit evidence which manifests on its face that OWCP committed an error in its decision.²¹ The evidence and argument she submitted failed to raise a substantial question concerning the correctness of OWCP's decision.²²

OWCP denied the employee's claim on a factual basis, *i.e.*, the failure to establish a compensable employment factor. Upon reconsideration, appellant did not provide additional argument asserting the grounds for which reconsideration was requested. As found above, the new

¹³ *M.P.*, Docket No. 19-0200 (issued June 14, 2019); *R.L.*, *supra* note 9.

¹⁴ *E.B.*, Docket No. 18-1091 (issued December 28, 2018).

¹⁵ *J.W.*, Docket No. 18-0703 (issued November 14, 2018).

¹⁶ *P.L.*, Docket No. 18-0813 (issued November 20, 2018).

¹⁷ *A.F.*, 59 ECAB 714 (2008), *D.G.*, 59 ECAB 455 (2008).

¹⁸ *W.R.*, Docket No. 19-0438 (issued July 5, 2019); *C.Y.*, Docket No. 18-0693 (issued December 7, 2018).

¹⁹ 20 C.F.R. § 10.607(a).

²⁰ *Id.* at § 10.607(b); *S.M.*, Docket No. 16-0270 (issued April 26, 2016).

²¹ *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

²² *Id.*

evidence submitted after OWCP's initial decision also failed to explain or raise a substantial question as to the correctness of OWCP's January 23, 2018 decision. Appellant provided a September 12, 2017 letter in which she described multiple interactions with her management that she believed caused her acute stress disorder and anxiety. She also submitted an April 5, 2017 witness statement from A.H. stating that on April 3, 2017 she saw a supervisor get face-to-face with appellant and yell before walking away. A statement from C.C. provided that he heard the same supervisor yell "liar" or "big liar," but was unsure of who the supervisor was talking to. An August 8, 2017 witness statement from D.E. provided that on different occasions he witnessed management distract and record appellant and that he observed visible stress on her from these occurrences. Lastly, appellant provided October 5 and 23, 2017 statements to her management suggesting that it changed the answers and personal information on her Form CA-2 before submitting it to labor relations.

The Board, however, has reviewed these factual documents and finds that collectively they do not, on their face, otherwise demonstrate clear evidence of error in OWCP's January 23, 2018 decision. Appellant has not explained how the submission of this evidence raises a substantial question concerning the correctness of OWCP's decision. Her claim was denied because she failed to submit any evidence that establishes compensable employment factors that led to a diagnosed medical condition. Therefore, this new evidence submitted following the last merit review does not show that OWCP erred when it denied appellant's occupational disease claim.²³

Following OWCP's January 23, 2018 decision, appellant also submitted medical records from her treating physicians dated March 1, 2016 to August 8, 2017. These reports detailed her symptoms of anxiety, gastrointestinal issues, abdominal pain, migraines and tension headaches related to stress resulting from interactions with her supervisor at work, and noted her diagnosis of acute stress disorder. The Board finds, however, that the submission of this medical evidence does not demonstrate clear evidence of error in OWCP's January 23, 2018 decision. In her original claim, appellant failed to provide sufficient factual evidence establishing the factors of her federal employment that caused or contributed to her alleged emotional condition. The medical evidence of record provided after OWCP's January 23, 2018 decision does not demonstrate that OWCP erred in its determination that she failed to provide sufficient evidence to establish the employment factors that led to her alleged condition. As noted, clear evidence of error is intended to represent a difficult standard.²⁴ It is not enough to show that evidence could be construed so as to produce a contrary conclusion. Instead, the evidence must shift the weight in appellant's favor.²⁵

The Board finds that appellant's request for reconsideration does not show on its face that OWCP committed error when it found in its January 23, 2018 decision that the employee had not established compensable factors of employment. Therefore, OWCP properly determined that she failed to demonstrate clear evidence of error in its January 23, 2018 decision.

²³ See *S.T.*, Docket No. 18-0925 (issued June 11, 2019).

²⁴ *Supra* note 14.

²⁵ *M.E.*, Docket No. 18-1442 (issued April 22, 2019).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 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