



## **FACTUAL HISTORY**

On January 5, 2018 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 4, 2018 she injured her right hand when she had a hard time turning the key to her vehicle while in the performance of duty. She did not stop work.

In a January 5, 2018 medical report, Dorothy McShane, a physician assistant, indicated that appellant presented with pain in her right wrist and thumb as a result of it being hard to turn a key in the ignition. She diagnosed sprain of the right thumb and referred appellant to physical therapy. In a physical therapy report of that same date, Sven Pfefferkorn, a physical therapist, outlined his evaluation, therapy assessment, goals, and treatment plan for appellant's right thumb sprain.

Appellant also provided the second page of a January 5, 2018 attending physician's report (Form CA-20) with an illegible signature. The form noted that she sustained a sprained thumb after her key stuck as she was turning it in the ignition. A box check marked "yes" indicated that appellant's condition was caused or aggravated by her employment activity.

In a January 8, 2018 medical report, Ms. McShane, noted that appellant had begun physical therapy to treat her sprained right thumb, and that her symptoms were improving. In an accompanying medical note, she noted that appellant could return to work with restrictions.

Wadler Fleurina, a physician assistant, noted in a February 1, 2018 report, that appellant had pain in her right wrist and numbness in her right fingers. He also diagnosed a sprain of her right thumb and de Quervain's tenosynovitis.

In a February 8, 2018 medical report, Dr. Andrea Breese, Board-certified in family medicine, noted that appellant's symptoms and pain from appellant's January 4, 2018 work incident remained unchanged. She diagnosed a sprain of the right thumb and de Quervain's tenosynovitis and estimated that appellant had healed roughly 25 percent. In a February 15, 2018 medical report, Dr. Breese indicated that appellant's conditions had healed roughly 50 percent.

In a February 22, 2018 medical report, Ms. McShane noted that appellant was still experiencing sharp and aching pain in her right hand and diagnosed right de Quervain's tenosynovitis.

In a February 27, 2018 medical report, Dr. Germaine Fritz, a Board-certified orthopedic surgeon, noted appellant's history of injury in relation to the January 4, 2018 employment incident and provided that she had undergone therapy and received medication to treat her conditions. He diagnosed right de Quervain's tenosynovitis and mild right osteoarthritis of the first carpometacarpal.

Appellant also provided physical therapy notes from multiple occupational therapists dated from January 10 to February 23, 2018 in which they noted her treatment for a right thumb sprain and de Quervain's tenosynovitis.

In a development letter dated March 16, 2018, OWCP informed appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that

continuation of pay was not controverted by the employing establishment, and thus, limited expenses had, therefore, been authorized. However, a formal decision was now required. OWCP advised appellant of the type of factual and medical evidence required to establish her traumatic injury claim and provided her with a questionnaire seeking further information related to the January 4, 2018 employment incident. It also requested a narrative medical report from her physician which provided the physician's rationalized medical explanation as to how the alleged employment incident caused the diagnosed condition. OWCP afforded appellant 30 days to respond.

In response, appellant provided a March 13, 2018 medical report from Dr. Fritz, in which he noted that an injection she received to her right first dorsal compartment provided significant relief to pain in her right hand.

In a medical report dated March 29, 2018, Dr. David Pommerening, Board-certified in preventative medicine, noted another check-up of appellant's right hand in relation to her de Quervain's tenosynovitis and right thumb sprain.

Appellant also provided multiple medical reports and physical therapy notes from March 13 to April 5, 2018 discussing treatment for de Quervain's tenosynovitis of the left wrist and a left wrist sprain.

By decision dated April 25, 2018, OWCP denied appellant's traumatic injury claim finding that the evidence she submitted was insufficient to establish the factual component of fact of injury. It noted that it was unclear as to what caused her condition as she failed to respond to the factual inquiries and, therefore, had not established the factual component of her claim.

Appellant continued to submit evidence to OWCP including copies of reports previously of record. She also provided medical reports and therapy notes dated from April 16, 2018 to February 22, 2019, detailing her treatment for injuries to her left wrist and left knee.

On April 29, 2019 appellant requested reconsideration of OWCP's April 25, 2018 decision.

Along with her reconsideration request, appellant provided a response to OWCP's questionnaire. She explained that, while on her route, the ignition switch in her vehicle was difficult to turn because it was cold outside and her postal truck was old. As appellant tried to turn the ignition switch over and over again, she felt pain in her right hand. She then called her supervisor to inform him that she had injured her hand.

By decision dated July 26, 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System).<sup>5</sup> 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.<sup>6</sup>

OWCP may not deny request for reconsideration solely because it was not timely 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>7</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 demonstrates clear evidence of error on the part of OWCP.<sup>8</sup>

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.<sup>9</sup> The Board notes that clear evidence of error is intended to represent a difficult standard.<sup>10</sup> Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.<sup>11</sup> It is not enough merely to establish that the evidence could be construed so as to produce a contrary conclusion.<sup>12</sup> This entails a limited review by OWCP of

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<sup>2</sup> 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).

<sup>3</sup> 20 C.F.R. § 10.607(a).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4a (February 2016).

<sup>5</sup> *Id.* at Chapter 2.1602.4(b) (February 2016).

<sup>6</sup> *See R.L.*, Docket No. 18-0496 (issued January 9, 2019).

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

<sup>8</sup> *Id.* at § 10.607(b); Federal (FECA) Procedure Manual, *supra* note 4 at Chapter 2.1602.5(a) (February 2016).

<sup>9</sup> *G.G.*, *supra* note 7.

<sup>10</sup> *M.P.*, Docket No. 19-0200 (issued June 14, 2019); *R.L.*, *supra* note 6.

<sup>11</sup> *E.B.*, Docket No. 18-1091 (issued December 28, 2018).

<sup>12</sup> *J.W.*, Docket No. 18-0703 (issued November 14, 2018).

the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.<sup>13</sup> 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.<sup>14</sup> The Board makes an independent determination as to whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>15</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.

A request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.<sup>16</sup> As appellant's April 29, 2019 request for reconsideration was not received within one year after the issuance of OWCP's last merit decision, dated April 25, 2018, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in its April 25, 2018 decision.<sup>17</sup>

The Board further finds that appellant's reconsideration request failed to demonstrate clear evidence of error on the part of OWCP in its last merit decision.

OWCP denied appellant's claim on a factual basis, *i.e.*, the failure to establish the factual component of fact of injury. Upon reconsideration, appellant submitted her response to OWCP's March 16, 2018 questionnaire received on April 29, 2019, in which she explained that because it was cold outside and her postal truck was old, she felt pain in her right hand after trying to turn the ignition switch over and over. The Board notes, however, that she did not explain how this argument raised a substantial question as to the correctness of OWCP's April 25, 2018 decision. Appellant submitted no other factual documents in support of her argument that, on their face, demonstrate that OWCP's denial of the claim was erroneous or raise a substantial question as to the correctness of OWCP's determination that she did not establish fact of injury.<sup>18</sup> The Board has held that the term clear evidence of error is intended to represent a difficult standard.<sup>19</sup> As such, the Board finds that this evidence is insufficient to demonstrate clear evidence error in OWCP's April 25, 2018 decision.

Appellant also submitted medical evidence dated from April 16, 2018 to February 22, 2019 from multiple physicians and occupational therapists detailing their treatment of her for a right

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<sup>13</sup> *P.L.*, Docket No. 18-0813 (issued November 20, 2018).

<sup>14</sup> *A.F.*, 59 ECAB 714 (2008); *D.G.*, 59 ECAB 455 (2008).

<sup>15</sup> *W.R.*, Docket No. 19-0438 (issued July 5, 2019); *C.Y.*, Docket No. 18-0693 (issued December 7, 2018).

<sup>16</sup> 20 C.F.R. § 10.607(a).

<sup>17</sup> *Id.* at § 10.607(b); *S.M.*, Docket No. 16-0270 (issued April 26, 2016).

<sup>18</sup> *See P.O.*, Docket No. 13-0092 (issued April 4, 2013).

<sup>19</sup> *Supra* note 10.

thumb sprain, de Quervain's tenosynovitis and mild right osteoarthritis of the first carpometacarpal. She also provided medical evidence detailing her treatment related to injuries to her left wrist and left knee. The Board notes, however, that the submission of this medical evidence does not demonstrate clear evidence of error in OWCP's April 25, 2018 decision. The underlying issue of this case is not medical in nature. Rather, it is factual in nature because appellant's traumatic injury claim was denied due to her failure to establish fact of injury. Even if fact of injury were established and an evaluation of medical evidence was undertaken, the medical evidence would not tend to raise a substantial question concerning the correctness of OWCP's April 25, 2018 decision.<sup>20</sup>

The Board finds that appellant's request for reconsideration does not show on its face that OWCP committed error when it found in its April 25, 2018 decision that she failed to establish fact of injury. For these reasons, OWCP properly determined that she did not demonstrate clear evidence of error in that decision.

### **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.

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<sup>20</sup> See *R.M.*, Docket No. 18-1393 (issued February 12, 2019).

**ORDER**

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

Issued: March 10, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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