



## **FACTUAL HISTORY**

On May 18, 2000 appellant, then a 48-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 17, 2000 he sustained low back pain when unloading bundles of mail at an apartment complex's central delivery point while in the performance of duty. OWCP accepted the claim for lumbosacral sprain.

Dr. Robert C. Henderson, a Board-certified orthopedic surgeon, treated appellant beginning on May 18, 2000. He maintained appellant on restricted duty through July 2001, and returned him to full-duty work, effective August 13, 2001.<sup>3</sup> Dr. Henderson provided periodic reports through July 9, 2010 diagnosing a severe lumbosacral sprain, lumbar disc disease, and an L5-S1 disc herniation.<sup>4</sup> Appellant remained in modified-duty status.

In January 17 and 20, 2011 reports, Dr. Frederick McClimans, an osteopath and Board-certified orthopedic surgeon, noted the May 17, 2000 employment injury. He diagnosed an L3-4 annular bulge and L5-S1 disc bulge. Dr. McClimans provided work restrictions and prescribed physical therapy.<sup>5</sup> He submitted periodic reports through February 21, 2011.

In a report dated January 5, 2012, Dr. Henderson recommended a stretching program. He returned appellant to limited-duty work.

On June 1, 2017 appellant filed a notice of recurrence (Form CA-2a) alleging that he sustained a recurrence of the need for medical treatment, commencing May 23, 2017, as a result of his previously accepted lumbosacral strain.

In a development letter dated June 8, 2017, OWCP notified appellant of the deficiencies of his claim and provided a questionnaire for his completion. It afforded him 30 days to respond.

In response, appellant provided a July 26, 2017 statement, noting the onset of lumbar pain on May 1, 2017 with an increase of symptoms on May 23, 2017.<sup>6</sup>

In a July 5, 2017 statement, Postal Manager L.R. noted that appellant had complained of low back pain while at work in May 2017.

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<sup>3</sup> An April 19, 2001 lumbar magnetic resonance imaging (MRI) scan demonstrated annular bulging at L3-4, and an annular tear with annular bulging at L5-S1. Appellant participated in physical therapy treatments in August and September 2001. A June 15, 2007 lumbar MRI scan demonstrated mild spondylotic changes at L3-S1 with mild diffuse disc bulging at multiple levels. Appellant also submitted medical records regarding treatment for a right shoulder condition accepted under OWCP File No. xxxxxx596.

<sup>4</sup> By decision dated September 11, 2002, OWCP denied appellant's request to change his treating physician as there was no evidence of inappropriate or improper treatment.

<sup>5</sup> Appellant participated in physical therapy treatments from February to May 2011.

<sup>6</sup> May 23, 2017 lumbar x-rays demonstrated advanced degenerative changes in the lumbosacral junction, and mild diffuse anterior spondylosis. A June 1, 2017 lumbar MRI scan demonstrated multilevel degenerative disc disease with spinal canal narrowing and neural foraminal stenosis, most severe at L3-4 and L4-5. Appellant also provided copies of medical reports previously of record.

In an August 30, 2017 report, Dr. Jennifer A. Locke, Board-certified in emergency medicine, diagnosed right conjunctivitis and possible hypertension. She returned him to unrestricted duty.

By decision dated November 21, 2017, OWCP denied appellant's recurrence claim, finding that the evidence of record was insufficient to establish causal relationship between his "present condition" and the accepted lumbosacral strain. It explained, "you have not established that you require additional medical treatment due to a worsening of your accepted work-related conditions, without intervening cause."

On November 29, 2017 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. During the hearing held on May 14, 2018, he explained that he claimed a recurrence to obtain continuing medical treatment. Appellant submitted June 20, 2017 and May 15, 2018 reports by Dr. McClimans diagnosing low back pain, low back strain, lumbar intervertebral disc disorders, lumbar disc degeneration, and spinal stenosis.

By decision dated June 15, 2018, OWCP's hearing representative affirmed the November 21, 2017 decision, finding that the medical evidence of record was insufficient to establish that the accepted lumbosacral strain required continuing medical care after 2013.

On January 21, 2020 appellant requested reconsideration, contending that his union representative had not provided adequate representation before OWCP, and that continuing lumbar symptoms interfered with his activities in retirement. He also submitted an undated report by Dr. McClimans, who noted that, based on a June 1, 2017 lumbar MRI scan, appellant's condition had not changed significantly since the accepted May 17, 2000 employment injury. Dr. McClimans opined that appellant's "job duties including pushing, pulling, lifting, twisting, climbing, sitting, and prolonged standing" during his 31 years of postal employment had aggravated the accepted lumbosacral strain.

By decision dated February 12, 2020, OWCP denied appellant's January 21, 2020 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>7</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>8</sup> Timeliness is determined by the document receipt date (*i.e.*,

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<sup>7</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>8</sup> 20 C.F.R. § 10.607(a).

the “received date” in OWCP’s Integrated Federal Employees’ Compensation System (iFECS)).<sup>9</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>10</sup>

When a request for reconsideration is untimely, OWCP undertakes a limited review to determine whether the request demonstrates clear evidence that OWCP’s most recent merit decision was in error.<sup>11</sup> OWCP’s procedures provide that it 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.<sup>12</sup> In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.<sup>13</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>14</sup> 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 substantial question concerning the correctness of OWCP’s decision is insufficient to demonstrate clear evidence of error. It is not enough merely to 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 not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must 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>12</sup>

### 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 issued on June 15, 2018 and OWCP received appellant’s request for reconsideration on January 21, 2020. As the request for reconsideration was not received by OWCP within the one-year time limitation, pursuant to 20 C.F.R. § 10.607(a),

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<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

<sup>10</sup> *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).

<sup>11</sup> See 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

<sup>12</sup> *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 9 at Chapter 2.1602.5 (February 2016).

<sup>13</sup> *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>14</sup> *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 9 at Chapter 2.1602.5(a) (February 2016).

the Board finds that the request for reconsideration was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in denying the claim.<sup>15</sup>

The Board further finds that appellant's untimely request for reconsideration failed to demonstrate clear evidence of error. The underlying issue is whether OWCP properly denied his recurrence claim because the evidence did not establish that his accepted lumbosacral sprain required continuing treatment on and after 2013. In support of his untimely request for reconsideration, appellant provided his January 15, 2020 statement describing his continuing symptoms and expressing dissatisfaction with his union representative. He also provided an undated report by Dr. McClimans opining that repetitive activities during 31 years of federal employment had aggravated the accepted lumbosacral strain. Appellant's January 15, 2020 statement, is irrelevant to the underlying medical issue of causal relationship.<sup>16</sup> Additionally, Dr. McClimans' report does not demonstrate that OWCP committed error in denying appellant's recurrence claim, nor does it raise a substantial question as to the correctness of OWCP's decision. The Board has held that the term clear evidence of error is intended to represent a difficult standard. The claimant must present evidence that on its face shows that OWCP made an error.<sup>17</sup> None of the evidence appellant submitted demonstrates on its face that OWCP committed an error in denying appellant's recurrence claim in its June 15, 2018 decision. Appellant has not otherwise submitted evidence of sufficient probative value to raise a substantial question as to the correctness of OWCP's June 15, 2018 decision. Thus, the evidence is insufficient to demonstrate clear evidence of error.<sup>18</sup>

For these reasons, the Board finds that OWCP properly denied appellant's request for reconsideration as it was untimely filed and failed to demonstrated 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.

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<sup>15</sup> 20 C.F.R. § 10.607(b); see *Debra McDavid*, 57 ECAB 149 (2005).

<sup>16</sup> *C.T.*, Docket No. 19-0058 (issued June 14, 2019); *Susan M. Biles*, 40 ECAB 420 (1988) (where the Board held that the statement of a layperson is not competent evidence on the issue of causal relationship).

<sup>17</sup> *G.B.*, Docket No. 19-1762 (issued March 10, 2020).

<sup>18</sup> See *J.D.*, Docket No. 18-1765 (issued June 11, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 12, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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