

Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.⁴

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board.⁵ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 8, 2013 appellant, then a 38-year-old mail handler, filed a notice of recurrence (Form CA-2a) alleging that on March 31, 2013 she felt a sharp pain and stiffness in her neck when opening bags while in the performance of duty. She reported the date of the original injury as August 30, 2007.⁶ Appellant indicated that she had recovered from the August 30, 2007 employment injury, but had sustained another injury on March 31, 2013.

In an April 4, 2013 letter, appellant noted that on March 29, 2013 she was working on a sorter machine and loading tubs and on March 30, 2013 she was again working on the sorting machine. Then on March 31, 2013 she was opening bags and felt a sharp pain in her back and stiffness in her neck.

On April 25, 2013 OWCP indicated in a letter that it would develop this claim as a new injury. It noted that appellant's claim indicated that she was alleging a new traumatic injury on March 31, 2013.

By decision dated June 14, 2013, OWCP denied appellant's claim finding that she had established that the incident occurred, as alleged, but that she had not submitted probative medical evidence of a diagnosed condition causally related to the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the September 20, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

⁵ Docket No. 17-0833 (issued September 7, 2017).

⁶ Appellant had a prior claim for a traumatic injury on August 30, 2007, which OWCP accepted for cervical and lumbar strains, and assigned OWCP File No. xxxxxx761.

On October 1, 2013, April 2 and December 3, 2014, and February 16 and November 7, 2016, appellant requested reconsideration and submitted additional evidence in support of her claim.

By decisions dated December 24, 2013, June 30, 2014, February 19, 2015, May 16, 2016, and January 17, 2017 OWCP denied modification.

On March 6, 2017 appellant, through counsel, appealed to the Board.

By decision dated September 7, 2017, the Board affirmed OWCP's January 17, 2017 decision finding that appellant had not established an injury causally related to the accepted March 31, 2013 employment incident.⁷

On September 10, 2018 appellant submitted OWCP's January 17, 2017 appeal request form and requested reconsideration of the September 7, 2017 merit decision.

By decision dated September 20, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim finding that the request 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.⁸ The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.⁹ 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.¹⁰ Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).¹¹ Imposition of this one-year filing limitation does not constitute an abuse of discretion.¹²

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

⁷ *Supra* note 5.

⁸ 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).

⁹ *J.V.*, Docket No. 19-0990 (issued August 26, 2020); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

¹⁰ 20 C.F.R. § 10.607(a).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

¹² *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).

decision was in error.¹³ 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.¹⁴ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹⁵

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹⁶ 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 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.¹⁷

ANALYSIS

The Board finds that OWCP properly denied appellant's request of reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.¹⁸

OWCP received appellant's request for reconsideration on September 10, 2018 which was more than one year after the September 7, 2017 merit decision,¹⁹ which had affirmed OWCP's January 17, 2017 merit decision. The one-year period for requesting reconsideration began 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

¹³ 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).

¹⁴ *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 11 at Chapter 2.1602.5 (February 2016).

¹⁵ *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁶ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 11 at Chapter 2.1602.5(a) (February 2016).

¹⁷ *Supra* note 15.

¹⁸ *R.T.*, Docket No. 20-0298 (issued August 6, 2020).

¹⁹ OWCP has no jurisdiction to review a Board decision. The decisions and orders of the Board are final as to the subject matter appealed and such decisions and orders are not subject to review, except by the Board. See 20 C.F.R. § 501.6(d). Appellant had 30 days from the date of the Board's September 7, 2017 decision to file a petition for reconsideration with this Board of its decision. *Id.* at § 501.7. See also *B.B.*, Docket No. 14-0464 (issued June 4, 2014).

Board.²⁰ As appellant's request for reconsideration was untimely filed,²¹ she must demonstrate clear evidence of error on the part of OWCP.²²

The Board further finds that appellant has not demonstrated clear evidence of error. The underlying issue is whether OWCP properly denied her traumatic injury claim because the evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted March 31, 2013 employment incident. In support of her claim, appellant submitted an appeal form requesting reconsideration of the Board's September 7, 2017 decision. She did not, however, submit evidence or arguments in support of her reconsideration request raising a substantial question concerning the correctness of the denial of her claim.

Appellant did not submit evidence demonstrating that OWCP committed an error in denying her claim for a traumatic injury in its January 17, 2017 decision.²³ She has not otherwise submitted evidence of sufficient probative value to raise a substantial question as to the correctness of the Board's September 7, 2017 decision affirming OWCP's January 17, 2017 merit decision.²⁴ Thus, appellant has not demonstrated clear evidence of error.

For these reasons, 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.

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.

²⁰ 20 C.F.R. § 10.607(b); *Debra McDavid*, 57 ECAB 149 (2005).

²¹ *Supra* note 17.

²² 20 C.F.R. § 10.607(b); *see R.T.*, Docket No. 19-0604 (issued September 13, 2019); *see Debra McDavid*, 57 ECAB 149 (2005).

²³ *W.R.*, Docket No. 18-1042 (issued February 12, 2019).

²⁴ *Supra* note 17.

ORDER

IT IS HEREBY ORDERED THAT the September 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 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