

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On February 6, 2003 appellant, then a 34-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her neck and both shoulders cutting open flats while in the performance of duty. She stopped work on February 6, 2003 and returned to her usual employment, a permanent modified position, on April 14, 2003. OWCP accepted the claim for bilateral shoulder strains.⁴

Appellant retired from the employing establishment effective March 3, 2008.

On April 3, 2015 appellant filed a notice of recurrence (Form CA-2a) for medical treatment causally related to her February 6, 2003 employment injury.

In a June 23, 2015 development letter, OWCP advised appellant that the medical evidence of record was insufficient to establish her recurrence claim. It provided her with a questionnaire and requested that she submit rationalized medical evidence to support her claim. OWCP afforded appellant 30 days to submit the requested evidence. No additional evidence was received.

By decision dated September 14, 2015, OWCP denied appellant's recurrence claim. It noted that it had last received medical evidence in 2005.

On October 3, 2015 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on May 23, 2016.

By decision dated July 26, 2016, OWCP's hearing representative affirmed the September 14, 2015 decision. He found that the medical evidence of record failed to establish the recurrence claim.

On May 23, 2017 appellant, through her then-counsel, requested reconsideration. He further requested that OWCP update its records to reflect his new address.

By decision dated July 19, 2017, OWCP denied modification of its July 26, 2016 decision. It noted that the record was devoid of medical evidence from 2005 until 2014. OWCP sent a copy of the decision to appellant's then-counsel at his former address and to appellant at her address of record.⁵

In letters dated September 5 and October 6, 2017, appellant's then-counsel requested the status of the May 23, 2017 reconsideration request. On October 12 and 30, 2017 he requested that OWCP update his address and asserted that neither he nor appellant had received a copy of the

⁴ OWCP had previously accepted appellant's 1999 occupational disease claim for right shoulder strain and synovitis, assigned OWCP File No. xxxxxx378. This claim has not been administratively combined with the present claim.

⁵ There is no indication of record that the decision was returned as undeliverable to either person.

July 19, 2017 decision. OWCP provided appellant's then-counsel with a copy of the case record on December 7, 2017.

On November 15, 2018 appellant, on the appeal request form that had accompanied OWCP's July 19, 2017 decision, indicated that she was requesting reconsideration.

By decision dated November 27, 2018, OWCP denied appellant's request for reconsideration, finding that it was untimely 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.⁶ 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.⁷ Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).⁸ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁹

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.¹⁰ Its 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, if the claimant's reconsideration request demonstrates "clear evidence of error" on the part of OWCP.¹¹ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹²

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹³ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence which 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

⁶ 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019).

⁷ 20 C.F.R. § 10.607(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsideration*, Chapter 2.1602.4(b) (February 2016).

⁹ *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

¹⁰ *See* 20 C.F.R. § 10.607(b); *L.A.*, Docket No. 19-0471 (issued October 29, 2019).

¹¹ *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *see also* 20 C.F.R. § 10.607(b); *supra* note 8 at Chapter 2.1602.5 (February 2016).

¹² *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

¹³ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 8 at Chapter 2.1602.5(a) (February 2016).

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.¹⁴

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.

OWCP's regulations¹⁵ and procedures¹⁶ establish a one-year time limitation for requesting reconsideration, which begins on the date of the original OWCP merit decision. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.¹⁷ The most recent merit decision was OWCP's July 19, 2017 decision.¹⁸ As appellant's request for reconsideration was not received until November 15, 2018, more than one year after the issuance of OWCP's July 19, 2017 merit decision, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in its July 19, 2017 decision.¹⁹

To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by OWCP.²⁰ The evidence must be positive, precise, and explicit and it must be apparent on its face that OWCP committed an error.²¹ On reconsideration, appellant failed to submit evidence or raise an argument relevant to the issue of whether she sustained a recurrence of a medical condition or disability causally related to her February 6, 2003 employment injury.²² Accordingly, OWCP properly found that she failed to demonstrate clear evidence of error.²³

On appeal appellant maintains that she had already had shoulder impingement at the time of her bilateral shoulder strains. She describes her difficulty finding a physician willing to treat her due to the involvement of workers' compensation and contends that she had tried for years to reopen her claim. However, as noted, the Board lacks jurisdiction to review the merits of this

¹⁴ *J.W.*, *supra* note 12.

¹⁵ 20 C.F.R. § 10.607(a); *see F.N.*, Docket No. 18-1543 (issued March 6, 2019); *Alberta Dukes*, 56 ECAB 247 (2005).

¹⁶ *Supra* note 8 at Chapter 2.1602.4 (February 2016).

¹⁷ *J.W.*, *supra* note 12; *Robert F. Stone*, 57 ECAB 292 (2005).

¹⁸ *See M.N.*, Docket No. 15-0758 (issued July 6, 2015) (the Board held that the timeliness calculation for a request for reconsideration runs from the date that OWCP first issued its final merit decision unless OWCP specifically reissues the decision anew.)

¹⁹ 20 C.F.R. § 10.607(b); *S.M.*, Docket No. 16-0270 (issued April 26, 2016).

²⁰ *J.W.*, *supra* note 12.

²¹ *Id.*

²² *J.B.*, Docket No. 18-1704 (issued April 8, 2019).

²³ *Id.*

case.²⁴ As set forth above, OWCP properly found that appellant's untimely request for reconsideration failed to demonstrate clear evidence of error.²⁵

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 November 27, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 2020
Washington, DC

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

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

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

²⁴ 20 C.F.R. §§ 501.2(c) and 501.3; *see also B.H.*, Docket No. 19-0169 (issued June 24, 2019).

²⁵ *See J.D.*, Docket No. 18-1765 (issued June 11, 2019).