

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

_____)	
E.T., Appellant)	
)	
and)	Docket No. 20-1651
)	Issued: May 6, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Cleveland, OH, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 21, 2020 appellant filed a timely appeal from a September 15, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated March 9, 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 over 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 January 30, 2018 appellant, then a 51-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 29, 2018 he was physically assaulted on his mail route and sustained a fractured nose, injuries to his face, mouth, eyes, and back while in the performance

¹ 5 U.S.C. § 8101 *et seq.*

of duty. On the reverse side of the claim form appellant's supervisor noted that appellant was injured in the performance of duty. Appellant stopped work on January 29, 2018.

In a state workers' compensation form dated January 29, 2018, a healthcare provider whose signature was illegible, noted that appellant was treated for multiple injuries sustained in a physical assault. Appellant reported working as a mail carrier and, while delivering mail on January 29, 2018, he was physically assaulted. He was diagnosed with a nasal fracture and physical assault. In an unsigned physician's report of work ability dated January 29, 2018, appellant was reportedly hit in the nose, mouth, head, and experienced back pain from the incident. Similarly, in a return to work note dated January 29, 2018, the provider noted: appellant sought emergency room treatment; was held off work on January 30, 2018; and returned to work on February 1, 2018.

In a development letter dated February 6, 2018, OWCP informed appellant that the evidence of record was insufficient to establish his traumatic injury claim. It noted that the evidence of record was insufficient to establish that he actually experienced the incident alleged to have caused his injury and no diagnosis of any condition related to his injury was provided. OWCP requested medical evidence and provided a questionnaire seeking further information including a description of events, a list of witnesses, and any investigative a police report related to the January 29, 2018 employment incident. It afforded appellant 30 days to submit the necessary evidence.

In an emergency room report dated January 29, 2018, Dr. Kirk Stiffler, Board-certified in emergency medicine, treated appellant for facial pain, headache, and back pain. Appellant reported working as a mail carrier when he was assaulted with a closed fist by an individual while on his route. He alleged that he was punched repeatedly in the face and head. Findings on examination revealed diffuse bilateral lumbar paraspinal tenderness with palpation, tenderness of the anterior aspect of the right shoulder, and limited range of motion. An x-ray of the right shoulder revealed no acute fracture or dislocation. A computerized tomography (CT) scan of the facial bones revealed acute minimally displaced left and right nasal bone fractures. Dr. Stiffler diagnosed acute nasal fracture, physical assault, and lumbar strain. He discharged appellant and recommended that he follow-up with an otolaryngologist.

By decision dated March 9, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence submitted was insufficient to establish the factual component of fact of injury because he failed to submit the requested written statements, including a police report, to clearly establish fact of injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

OWCP continued to receive evidence. Appellant resubmitted the following medical reports previously of record: emergency room records from Dr. Stiffler dated January 29, 2018; an x-ray of his right shoulder dated January 29, 2018; a CT scan of facial bones of even date; a state workers' compensation form of even date; an unsigned physician's report of work ability dated January 29, 2018; and a return to work note dated January 29, 2018. These documents were initially submitted on February 2 and 16, 2018.

By appeal request form postmarked August 13, 2020, received by OWCP on August 18, 2020, appellant requested both an oral hearing and reconsideration.

In an undated statement received by OWCP on August 31, 2020, appellant withdrew his hearing request and requested only reconsideration.

By decision dated September 15, 2020, 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,² OWCP has the discretion to reopen a case for further merit review.³ 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.⁴ Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS).⁵ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁶

OWCP may not deny a reconsideration request solely because it was untimely filed. When a claimant's request for reconsideration is untimely filed, OWCP must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error.⁷ If a request demonstrates clear evidence of error, it will reopen the case for merit review.⁸

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.⁹ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.¹⁰ Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹¹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹² 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

² 5 U.S.C. § 8101 *et seq.*

³ *Id.* at § 8128(a); *P.J.*, Docket No. 19-1479 (issued May 8, 2020); *J.W.*, Docket No. 18-0703 (issued November 14, 2018).

⁴ 20 C.F.R. § 10.607(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (September 2020).

⁶ *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

⁷ 20 C.F.R. § 10.607(b); *C.M.*, *id.*

⁸ *See also id.* at § 10.607(b); *supra* note 5 at Chapter 2.1602.5 (September 2020).

⁹ *J.S.*, Docket No. 20-0337 (issued July 15, 2020).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

the new evidence demonstrates clear error on the part of OWCP.¹³ To demonstrate clear evidence of error, the evidence submitted 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

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁵ The claimant must present evidence which on its face shows that OWCP made an error. Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is insufficient to demonstrate clear evidence of error.¹⁶ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁷

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 regulations provide that the one-year time limitation period for requesting reconsideration begins on the date of the last merit decision.¹⁸ The last merit decision was dated March 9, 2018. Because appellant's request for reconsideration was first received on August 18, 2020, more than one year after the March 9, 2018 merit decision, the Board finds that their request was untimely filed.¹⁹ Therefore, appellant must demonstrate clear evidence of error on the part of OWCP.²⁰

The Board finds that appellant failed to demonstrate clear evidence of error.

On reconsideration appellant submitted several medical reports to OWCP. These reports, however, were previously of record. Emergency room records from Dr. Stiffler dated January 29, 2018, an x-ray of his right shoulder dated January 29, 2018; a CT scan of facial bones of even date; a state workers' compensation form of even date; an unsigned physician's report of work ability dated January 29, 2018; and a return to work note dated January 29, 2018. These documents were previously reviewed by OWCP in its March 9, 2018 decision. The Board, therefore, finds that this

¹³ *Id.*

¹⁴ *See C.M., supra* note 6.

¹⁵ *Supra* note 5 at Chapter 2.1602.4(b) (February 2016).

¹⁶ *C.M., supra* note 6.

¹⁷ *Id.*

¹⁸ 20 C.F.R. § 10.607(a).

¹⁹ *Id.*

²⁰ 20 C.F.R. § 501.6(d); *see R.T.*, Docket No. 20-0298 (issued August 6, 2020); *G.G.*, Docket No. 18-1074 (issued January 7, 2019).

previously submitted evidence does not raise a substantial question concerning the correctness of OWCP's decision and is insufficient to demonstrate clear evidence of error.²¹

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 September 15, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²¹ *C.M., supra* note 6.