

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

_____)	
R.L., Appellant)	
)	
and)	Docket No. 21-0090
)	Issued: May 12, 2021
DEPARTMENT OF THE NAVY, SPACE & NAVAL WARFARE SYSTEMS COMMAND, North Charleston, SC, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 23, 2020 appellant filed a timely appeal from a May 1, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ The last merit decision in this case was a Board decision dated January 9, 2019 which became final after 30 days of issuance, and is not subject to further review.² As there was no merit decision issued by OWCP within 180 days

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, she asserted that oral argument should be granted to allow her to present argument supporting an employment-related emotional condition. The Board, in exercising its discretion, denies her request for oral argument because the case has previously been before the Board and the Board does not have jurisdiction over the merits of this case. As such the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

² 20 C.F.R. § 501.6(d).

of the filing of this appeal, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have 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 of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On December 3, 2013 appellant, then a 43-year-old administrative specialist, filed an occupational disease claim (Form CA-2) alleging that she sustained work-related emotional conditions in the form of stress, depression, anxiety disorder, panic attacks, and panic disorder. She noted that she first became aware of her claimed condition and its relation to her federal employment on August 22, 2013, the date she stopped work.

In a December 5, 2013 statement, appellant indicated that on August 22, 2013 she informed her supervisor of a decline in her health and ability to concentrate due to stress and pressure caused by an upcoming move to a new workplace approximately eight or nine miles away from her then-current workplace. She advised that she stopped work beginning August 22, 2013 and felt that she was treated harshly after she sent an e-mail to her supervisor on August 27, 2013 about the possibility of telework. Appellant indicated that she believed that her supervisor was "continuing to intimidate" her when he responded, "Facilities has moved [appellant's] boxes and chair to [Building 198] and installed the keyboard tray as previously requested." She claimed that she had been called "a squatter" and noted, "I have been abused psychologically and I have been lied to and lied on and my chain of command failed me." Appellant also submitted medical evidence in support of her claim. A portion of the reports indicated that she suffered from depression, anxiety, and panic attacks.

In a February 12, 2014 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. In response, appellant submitted a statement in which she indicated that between January and August 2013 she experienced a lot of stress because her work team was transitioning from contractors to government workers. She

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the May 1, 2020 decision, appellant submitted additional evidence to OWCP. 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. 18-0496 (issued January 9, 2019); Docket No. 14-1936 (issued July 27, 2015).

claimed that her work unit was not adequately supported by management in the performance of her work during this transition period. Appellant asserted that on June 24, 2013 she advised another supervisor, that she was not ready to move to Building 198. She claimed that this supervisor gave her assurances that she would not have to move until she was ready to make such a move. Appellant indicated that she suffered a great deal of stress because she was told by her supervisor in an August 22, 2013 e-mail that she would have to vacate her work space by the close of business on August 23, 2013. By separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant's allegations of harassment. It afforded both parties 30 days to respond.

Appellant submitted a series of documents, including copies of e-mails, concerning the move to Building 198. In several of the documents, she indicated that she wished to postpone her move to Building 198 until issues were resolved regarding her ability to effectively and efficiently perform her job duties at the new location. In an August 12, 2013 e-mail, appellant's supervisor advised that appellant "is currently squatting in Building 3112, cube 20." Appellant also submitted additional medical evidence in support of her claim.

By decision dated March 19, 2014, OWCP denied appellant's emotional condition claim, finding that she had not established a compensable employment factor. It found that the employing establishment did not commit error or abuse as this was an administrative action with respect to a move to Building 198 in August 2013. OWCP also determined that appellant had not established that she was subjected to harassment.

On April 25, 2014 appellant requested reconsideration of OWCP's March 19, 2014 decision. She submitted additional evidence including several statements in which she continued to argue that the employing establishment mishandled her move to Building 198 in August 2013.

By decision dated May 7, 2014, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On June 24, 2014 appellant again requested reconsideration of her claim. In support thereof, she submitted additional personal statements and documents regarding the move to Building 198 in August 2013.

On July 17, 2014 OWCP received an undated statement from appellant's supervisor that addressed appellant's claimed employment factors. The supervisor noted that appellant rejected two requests to move in June and July 2013 and that these were cancelled in an effort to accommodate her. On August 2, 2013 it was discovered that appellant's cubicle was assigned to two individuals and a proper request to vacate was issued on August 12, 2013 after a new employee arrived to occupy the same space. The supervisor indicated that appellant made little progress towards carrying out the move and noted that he issued her a final request to move on August 22, 2013. He noted that the move did not require special computer server or access requirements, and the "Carpathia" server was available from the contractor's site. The supervisor noted that the term "squatting" was used to denote when a person was working in a cubicle not officially assigned to him or her or was occupying a space marked vacant. He noted that appellant's cubicle in Building 3112 was considered to be vacant and had been assigned to another

employee. The supervisor asserted that the term “squatting” was not used only for her and was not meant to be a personal insult.

By decision dated August 29, 2014, OWCP denied modification of its March 19, 2014 decision. It determined that appellant had not established a compensable employment factor, including the supervisor’s use of the term “squatter” or “squatting.”

Appellant appealed OWCP’s August 29, 2014 decision to the Board and, by decision dated July 27, 2015,⁶ the Board affirmed the August 29, 2014 decision denying her emotional condition claim, finding that she had not established a compensable employment factor.

On April 29, 2016 appellant again requested reconsideration of her claim. She submitted additional documents, including a copy of a March 3, 2016 prehearing statement that the employing establishment produced in connection with an Equal Employment Opportunity Commission (EEOC) proceeding. The document indicated that a facilities office manager sent an e-mail to several managers, which indicated that appellant was “squatting” in her work cube. It was noted that it was common in the facilities office to refer to employees as squatting when it was believed that they were sitting in unassigned work spaces. The document noted, “[h]owever, it was later discovered that the facilities office erred in believing that the complainant was squatting because [appellant] in fact was sitting in her assigned cube in Building 3112 since 2011.” Appellant also submitted additional medical evidence in support of her reconsideration request.

By decision dated May 18, 2016, OWCP denied appellant’s request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On August 22, 2016 appellant requested reconsideration of her claim. In an August 22, 2017 letter received by OWCP on that date, she advised that she had received psychiatric care on a regular basis since August 2013 and indicated that her attending physicians had requested that OWCP carefully review her requests for reimbursement. Appellant submitted an OWCP document listing medical bills that had been denied for reimbursement.

By decision dated November 20, 2017, OWCP denied appellant’s request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

Appellant appealed OWCP’s November 20, 2017 decision to the Board and, by decision dated January 9, 2019,⁷ the Board affirmed the November 20, 2017 decision.

On April 13, 2020 appellant requested reconsideration of her claim. She resubmitted a copy of the March 3, 2016 EEOC document, and she argued in an April 13, 2020 statement that the document demonstrated that the employing establishment admitted it erred when it referred to her remaining in Building 3112 as “squatting.” Appellant further alleged that the employing establishment created a hostile work environment, bullied/abused her and subjected her to misuse

⁶ *Id.*

⁷ *Supra* note 5.

of power, denied her use of the proper chain of command, withheld valuable information, and mishandled her workers' compensation claim by providing false information.

By decision dated May 1, 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, OWCP has the discretion to reopen a case for further merit review.⁸ 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.⁹ 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).¹⁰ Imposition of this one-year filing limitation does not constitute an abuse of discretion.¹¹

OWCP may not deny a reconsideration request solely because it was untimely filed. When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error.¹² If an application demonstrates clear evidence of error, OWCP will reopen the case for merit review.¹³

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹⁴ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.¹⁵ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹⁶ 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

⁸ 5 U.S.C. § 8128(a); *see also* *A.B.*, Docket No. 19-1539 (issued January 27, 2020); *W.C.*, 59 ECAB 372 (2008).

⁹ 20 C.F.R. § 10.607(a).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2020).

¹¹ *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).

¹² *See* 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

¹³ *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 10 at Chapter 2.1602.5 (February 2016).

¹⁴ *A.A.*, Docket No. 19-1219 (issued December 10, 2019); *J.F.*, Docket No. 18-1802 (issued May 20, 2019); *J.D.*, Docket No. 16-1767 (issued January 12, 2017); *Dean D. Beets*, 43 ECAB 1153 (1992).

¹⁵ *J.D.*, Docket No. 19-1836 (issued April 6, 2020); *Leone N. Travis*, 43 ECAB 227 (1999).

¹⁶ *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

the new evidence demonstrates clear error on the part of OWCP.¹⁷ 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.¹⁸

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁹ The claimant must present evidence which on its face shows that OWCP made an error.²⁰ 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 not clear evidence of error.²¹ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.²²

ANALYSIS

The Board finds that 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.

OWCP properly determined that appellant failed to file a timely request for reconsideration. A request for reconsideration must be received within one year of the date of the last merit decision for which review is sought.²³ As appellant's request for reconsideration was not received by OWCP until April 13, 2020, more than one year after issuance of the Board's July 27, 2015 merit decision, it was untimely filed.²⁴ Consequently, she must demonstrate clear evidence of error by OWCP in its August 29, 2014 decision.

The Board further finds that appellant has not demonstrated clear evidence of error.

Appellant submitted a previously considered March 3, 2016 prehearing statement produced by the employing establishment in connection with an EEOC proceeding and argued that management's reference to her as a "squatter" or as engaging in "squatting" constituted a compensable employment factor. However, she did not adequately explain how the March 3, 2016 document, which contained a discussion of how the term "squatting" was commonly used at the employing establishment, tended to support her claim that management's use of the phrase rose to

¹⁷ *T.N.*, Docket No. 18-1613 (issued April 29, 2020).

¹⁸ *J.M.*, Docket No. 19-1842 (issued April 23, 2020).

¹⁹ *See supra* note 10 at Chapter 2.1602.5(a) (February 2020); *see also J.S.*, Docket No. 16-1240 (issued December 1, 2016).

²⁰ *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

²¹ *Id.*

²² *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

²³ *See supra* note 9.

²⁴ *See supra* note 10 at Chapter 2.1602.4a (February 2020).

the level of harassment or abuse/error in an administrative matter or otherwise demonstrated error in OWCP's August 29, 2014 decision. Appellant also argued that the employing establishment created a hostile work environment, bullied/abused her, subjected her to misuse of power, denied her use of the proper chain of command, withheld valuable information, and mishandled her workers' compensation claim by providing false information. However, these vague and unsupported allegations are insufficient to demonstrate clear evidence of error.

As noted, clear evidence of error is intended to represent a difficult standard.²⁵ Even a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical evidence requiring further development is insufficient to demonstrate clear evidence of error. It is not enough to show that evidence could be construed so as to produce a contrary conclusion. Instead, the evidence must shift the weight in appellant's favor.²⁶

The Board finds that appellant's request for reconsideration does not demonstrate on its face that OWCP committed error when it found in its August 29, 2014 decision that she had not met her burden of proof to establish an employment-related emotional condition.²⁷ For these reasons, OWCP properly denied appellant's request for reconsideration.

CONCLUSION

The Board finds that 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.

²⁵ See *supra* note 19.

²⁶ *M.E.*, Docket No. 18-1442 (issued April 22, 2019).

²⁷ See *S.F.*, Docket No. 09-0270 (issued August 26, 2009).

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 12, 2021
Washington, DC

Alec J. Koromilas, 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