

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

_____)	
K.H., Appellant)	
)	
and)	Docket No. 21-0784
)	Issued: November 16, 2021
U.S. POSTAL SERVICE, NORTHRIDGE POST OFFICE, Northridge, CA, Employer)	
_____)	

Appearances:
Sarah Kretsinger, Esq., for the appellant¹
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 April 28, 2021 appellant, through counsel, filed a timely appeal from a November 5, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated October 8, 2019, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

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 October 7, 2016 appellant, then a 28-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on October 6, 2016 he sustained a concussion, neck and back spasms, bruised ribs, and left knee pain as a result of motor vehicle accident while in the performance of duty. He noted the brakes on his postal vehicle failed and the vehicle crashed into a wall. Appellant stopped work on the date of injury. On November 21, 2016 OWCP accepted the conditions of strain of muscle, fascia, and tendon of the neck; sprain of ligaments of the lumbar spine; and contusion of the left knee. It paid appellant wage-loss compensation for disability from work on the supplemental rolls commencing November 21, 2016. On February 2, 2017 appellant returned to work with restrictions. Subsequently, OWCP paid him wage-loss compensation on the supplemental rolls for disability from work commencing February 2, 2017.

By decision dated June 5, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence rested with Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon and an OWCP referral physician, who opined, in a March 24, 2017 medical report, that appellant no longer had residuals or disability causally related to his accepted October 6, 2016 employment injury.

Appellant requested reconsideration. By decisions dated August 30, 2018 and October 8, 2019, OWCP denied modification of its termination decision.

On October 7, 2020 appellant resubmitted a May 1, 2018 supplemental report from Dr. Matthew Root, a Board-certified psychiatrist, who opined that appellant had continuing residuals and disability of his October 6, 2016 work-related injury. Dr. Root maintained that the acceptance of appellant's claim should be expanded to include the additional condition of lumbar disc herniation at L4-5 with radiculopathy.

On October 9, 2020 OWCP received in the Integrated Federal Employees' Compensation System (iFECS) appellant's October 9, 2020 request for reconsideration of the October 8, 2019 decision, filed through counsel. It also received an October 7, 2020 medical report from Dr. Richard M. Scott, a licensed clinical psychologist. Dr. Scott noted a history of appellant's October 6, 2016 employment injury and psychological treatment. He discussed examination findings and diagnosed single episode-of-moderate major depressive disorder and post-traumatic stress disorder (PTSD). Dr. Scott opined that, based on appellant's history, findings, and mechanism of injury, the diagnosed conditions were a direct result of the October 6, 2016 employment injury. He explained that PTSD is a mental health condition that develops after a very stressful or distressing event. Dr. Scott described the resultant PTSD symptoms. He noted that PTSD was marked by intrusive distressing recollections or dreams. Dr. Scott maintained that, on October 6, 2016, appellant went through a debilitating and life-threatening motor vehicle accident at work that was categorically dangerous and traumatic for him.

By decision dated November 5, 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.³ This discretionary authority, however, is subject to certain restrictions. 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 (*i.e.*, the "received date" in OWCP's iFECS).⁵ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁶

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.⁷ 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.⁸ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.⁹

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹⁰ 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

³ 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).

⁴ 20 C.F.R. § 10.607(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

⁶ *G.G.*, Docket No. 18-1074 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁷ *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).

⁸ *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also id.* at § 10.607(b); *supra* note 5 at Chapter 2.1602.5 (February 2016).

⁹ *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).

¹⁰ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 5 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. The Board makes an independent determination as to whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹¹

ANALYSIS

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

OWCP's regulations¹² and procedures¹³ establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.¹⁴ The most recent merit decision was OWCP's October 8, 2019 decision. As iFECs lists the received date for appellant's reconsideration request as October 9, 2020, more than one year after OWCP's October 8, 2019 decision, the reconsideration request was untimely filed.¹⁵ Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in terminating his wage-loss compensation and medical benefits, effective June 5, 2017.

In support of his untimely reconsideration request, appellant submitted evidence, which was previously of record, as well as, a new report of Dr. Scott. In his October 7, 2020, Dr. Scott opined that appellant developed additional conditions of single episode-of-moderate major depressive disorder and PTSD and was disabled from work as a direct result of the October 6, 2016 employment injury. Although this report provides an affirmative opinion that appellant continued to suffer residuals and remained disabled as a result of his accepted employment injury, it does not raise a substantial question as to the correctness of OWCP's October 8, 2019 merit decision and is insufficient to demonstrate clear evidence of error.¹⁶ Evidence such as a detailed, well-rationalized medical report that, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.¹⁷ As such, the Board finds that Dr. Scott's report is insufficient to demonstrate clear evidence of error in the October 8, 2019 merit decision.

¹¹ *U.C.*, Docket No. 19-1753 (issued June 10, 2020).

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

¹³ *Supra* note 5 at Chapter 2.1602.4 (February 2016); *see L.A.*, Docket No. 19-0471 (issued October 29, 2019); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

¹⁴ 20 C.F.R. § 10.607(b); *see O.K.*, Docket No. 21-0708 (issued September 29, 2021); *Debra McDavid*, 57 ECAB 149 (2005).

¹⁵ *See S.S.*, Docket No. 17-0706 (issued November 24, 2017).

¹⁶ *See D.B.*, Docket No. 20-0466 (issued December 17, 2020); *C.D.*, Docket No. 19-1462 (issued June 26, 2020); *A.G.*, Docket No. 18-0555 (issued August 8, 2018).

¹⁷ *See id.*

On appeal, counsel contends that appellant's request for reconsideration of OWCP's October 8, 2019 decision was timely filed because it was submitted to OWCP *via* the Employees' Compensation Operations and Management Portal and received by OWCP on October 7, 2019. However, as explained above, OWCP's procedures provide that timeliness is determined by the documents received date in iFECS.¹⁸ iFECS lists the received date for appellant's reconsideration request as October 9, 2020, more than one year after OWCP's October 8, 2019 decision, and thus, the reconsideration request was untimely filed.¹⁹

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 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

¹⁸ *Supra* note 5.

¹⁹ *See supra* note 16.