

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

)	
R.R., Appellant)	
)	
and)	Docket No. 21-0613
)	Issued: October 8, 2021
DEPARTMENT OF HOMELAND SECURITY,)	
CUSTOMS & BORDER PROTECTION,)	
Marfa, TX, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 12, 2021 appellant filed a timely appeal from a February 16, 2021 nonmerit decision of the Office of Workers' Compensation Program (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated March 6, 2019, 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 the claim.

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.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 17, 2019 appellant, then a 43-year-old patrol agent, filed a traumatic injury claim (Form CA-1) alleging that, earlier that day, he sustained an irritation of his neck and throat and a temporary loss or lessening of his voice when a detainee struck him in the throat with his hand while in the performance of duty.

In a development letter dated January 30, 2019, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted an authorization for examination and/or treatment (Form CA-16) completed by the employing establishment on January 17, 2019 noting that he had been struck on the left side of his neck while in the performance of duty. In the attending physician's portion of the form, Part B, an emergency room practitioner whose signature is illegible found a normal examination, diagnosed a neck contusion, and returned appellant to full-duty work.

Appellant also submitted a January 17, 2019 return to work slip signed by William Kyle Scabrough, a registered nurse.

By decision dated March 6, 2019, OWCP accepted that the January 17, 2019 employment incident had occurred as alleged, but denied appellant's traumatic injury claim as he did not submit sufficient medical evidence. It found that, as the January 17, 2019 form report did not contain a legible signature, it was unable to verify the specialist who signed the report. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 26, 2021 appellant requested reconsideration. He contended that a hospital physician had signed the Form CA-16. Appellant asserted that he had already submitted the required factual and medical evidence to OWCP, but that OWCP had not associated those documents with his case record. He submitted additional evidence.

In a January 17, 2019 report, Dr. William C. Stief, a physician specializing in emergency medicine, noted that appellant had been struck in the side of his throat during an altercation at work. On examination, he found a nontender larynx and normal voice. Dr. Stief diagnosed a neck contusion and returned appellant to full duty.

In a January 24, 2019 employing establishment safety investigation data form, an employing establishment official noted that appellant had been struck in the throat while in the performance of duty.

On reconsideration, appellant asserted, in a June 11, 2020 statement that, he sustained no other injuries between the January 17, 2019 employment incident and the time he reported it to his supervisor, and that he had no relevant preexisting conditions. He provided a December 15, 2016 report diagnosing metatarsalgia and October 23, 2019 reports about a right ankle problem.

Appellant also submitted copies of the Form CA-16 previously of record.

By decision dated February 16, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim, 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.² This discretionary authority, however, is subject to certain restrictions.³ OWCP's regulations establish a one-year time limitation for requesting reconsideration, which begins on the date of the original OWCP merit decision.⁴ A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.⁵ Timeliness is determined by the document receipt date, the received date in OWCP's Integrated Federal Employees' Compensation System (iFECS).⁶ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁷

When a reconsideration request is untimely, OWCP undertakes a limited review to determine whether the request demonstrates clear evidence that OWCP's final merit decision was in error.⁸ 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 his or her request for reconsideration demonstrates clear evidence of error on the part of OWCP.⁹ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹⁰

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by OWCP.¹¹ The evidence must be positive, precise, and explicit and

² 5 U.S.C. § 8128(a); *see B.W.*, Docket No. 19-0626 (issued March 4, 2020); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

³ 20 C.F.R. § 10.607(a).

⁴ *Id.*; *T.T.*, Docket No. 19-1624 (issued October 28, 2020); *V.G.*, Docket No. 19-0038 (issued June 18, 2019); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Alberta Dukes*, 56 ECAB 247 (2005).

⁵ *J.W.*, *id.*; *Robert F. Stone*, 57 ECAB 292 (2005).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (September 2020).

⁷ *A.M.*, Docket No. 20-0143 (issued October 28, 2020); *S.T.*, Docket No. 18-0925 (issued June 11, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁸ *L.N.*, Docket No. 20-0742 (issued October 26, 2020); *C.V.*, Docket No. 18-0751 (issued February 22, 2019); *B.W.*, Docket No. 10-0323 (issued September 2, 2010); *Leon J. Modrowski*, 55 ECAB 196 (2004); *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

⁹ *D.G.*, Docket No. 18-1038 (issued January 23, 2019); *Gladys Mercado*, 52 ECAB 255 (2001).

¹⁰ *V.G.*, *supra* note 4; *E.P.*, Docket No. 18-0423 (issued September 11, 2018); *Nelson T. Thompson*, 43 ECAB 919 (1992).

¹¹ *W.H.*, Docket No. 20-0395 (issued October 23, 2020); *Darletha Coleman*, 55 ECAB 143 (2003).

must manifest on its face that OWCP committed an error.¹² Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹³ It is not enough merely to demonstrate that the evidence could be construed so as to produce a contrary conclusion.¹⁴ 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.¹⁵ 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.¹⁶ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP such that it abused its discretion in denying merit review in the face of such evidence.¹⁷

ANALYSIS

The Board finds that OWCP properly determined that appellant's request for reconsideration was untimely filed.

A request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.¹⁸ As previously explained, timeliness is determined by the document receipt date, *i.e.*, the "received date" into iFECS.¹⁹ As appellant's request for reconsideration was not received into iFECS until January 26, 2021, more than one year after the issuance of OWCP's March 6, 2019 merit decision, it was untimely filed. Consequently, he must demonstrate clear evidence of error by OWCP in its March 6, 2019 merit decision.²⁰

The Board further finds, that appellant has established clear evidence of error in OWCP's March 6, 2019 merit decision.

In its March 6, 2019 decision, OWCP denied appellant's claim based on the January 17, 2019 form report, *i.e.*, Part B, the attending physician's portion of Form CA-16, in which a medical

¹² *S.T.*, *supra* note 7; *Pasquale C. Darco*, 54 ECAB 560 (2003); *Leona N. Travis*, 43 ECAB 227 (1991).

¹³ *L.B.*, Docket No. 19-0635 (issued August 23, 2019); *V.G.*, *supra* note 4; *Leon J. Modrowski*, *supra* note 8.

¹⁴ *W.H.*, *supra* note 11; *V.G.*, *supra* note 4.

¹⁵ *L.B.*, *supra* note 13; *V.G.*, *supra* note 4.

¹⁶ *D.G.*, *supra* note 9.

¹⁷ *See P.A.*, Docket No. 20-0061 (issued January 29, 2021); *George C. Vernon*, 54 ECAB 319 (2003); *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

¹⁸ 20 C.F.R. § 10.607(a).

¹⁹ *Id.*

²⁰ *Supra* note 18 at § 10.607(b). *See also W.H.*, Docket No. 20-0395 (issued October 23, 2020).

practitioner diagnosed a neck contusion. OWCP found that this report was insufficient to establish that the accepted January 17, 2019 employment incident had caused an injury. The Board finds, however, that OWCP improperly denied appellant's claim. OWCP may accept a case without a medical report where the condition is a minor one, such as a burn, laceration, insect sting, or animal bite, that can be identified on visual inspection by a layperson, and no dispute exists as to fact of injury.²¹ A contusion is a visible injury capable of being diagnosed by a layperson. This diagnosis was included in Part B of the January 17, 2019 Form CA-16 and OWCP accepted that the January 17, 2019 employment incident occurred at the time and place, and in the manner alleged. Therefore, a medical report was not necessary in this case for a contusion to be accepted as an injury.²² Dr. Stief reconfirmed this diagnosis in his January 17, 2019 report which appellant submitted on reconsideration. The Board finds that OWCP's failure to accept contusion as a visible injury demonstrates clear evidence of error.

Therefore, the Board finds that appellant has raised a substantial question as to the correctness of the March 6, 2019 merit decision. The Board will reverse OWCP's February 16, 2021 decision and remand the case for an appropriate decision on the merits of appellant's claim.

CONCLUSION

The Board finds that appellant has demonstrated clear evidence of error in the March 6, 2019 merit decision and, thus, OWCP improperly denied his request for reconsideration of the merits of his claim.

²¹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013). *R.H.*, Docket No. 20-1684 (issued August 27, 2021); *M.B.*, Docket No. 15-0287 (issued August 20, 2015); *Pearlene Morton*, 52 ECAB 493 (2001).

²² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 16, 2021 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.²³

Issued: October 8, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²³ The Board notes that the employing establishment issued a completed Form CA-16 on January 17, 2019. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *C.B.*, Docket No. 19-1882 (issued April 1, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).