

FACTUAL HISTORY

On November 27, 2018 appellant, then a 49-year-old water/wastewater systems mechanic, filed a traumatic injury claim (Form CA-1) alleging that on September 9, 2016 she strained her left shoulder when she unloaded pails of chlorine tablets weighing 20-55 pounds while in the performance of duty.

By decision dated January 7, 2019, OWCP denied the claim, finding that the evidence of record was insufficient to establish that the September 9, 2016 employment incident occurred, as alleged. It noted that appellant did not respond to its December 6, 2018 development letter or complete the attached questionnaire as requested. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 26, 2019 appellant requested reconsideration. By decision dated April 22, 2019, OWCP denied further merit review of appellant's claim.

On May 3, 2019 appellant again requested reconsideration of the January 7, 2019 merit decision and submitted medical evidence. By decision dated July 29, 2019, OWCP denied modification of its prior decision.²

On August 11, 2020 appellant requested reconsideration of OWCP's July 29, 2019 decision. She submitted her completed development questionnaire dated November 18, 2019 and medical reports dated September 13, 2016 through November 7, 2019.

By decision dated September 15, 2020, OWCP 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.

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. 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, *i.e.*,

² Appellant appealed the July 29, 2019 decision to the Board. In its July 31, 2020 order, the Board dismissed the appeal because the appeal was untimely filed. *Order Dismissing Appeal*, Docket No. 20-1390 (issued July 31, 2020).

³ 5 U.S.C. § 8128(a); *see also T.J.*, Docket No. 21-0586 (issued September 30, 2021); *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).

the “received date” in OWCP’s Integrated Federal Employees’ Compensation System (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 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.¹¹

OWCP’s procedures note that the term clear evidence of error is intended to represent a difficult standard. The claimant must present evidence which on its face demonstrates that OWCP made an error (for example, proof that a schedule award was miscalculated). 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

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

⁶ *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).

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 (1990).

⁸ *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 6 at Chapter 2.1602.5 (February 2016).

⁹ *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁰ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 6 at Chapter 2.1602.5(a) (February 2016).

¹¹ *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

error.¹² The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹³

ANALYSIS

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

The last merit decision was dated July 29, 2019. As appellant's request for reconsideration was not received by OWCP until August 11, 2020, more than one-year after the July 29, 2019 merit decision, pursuant to 20 C.F.R. § 10.607(a), the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in denying the claim.¹⁴

The Board further finds that OWCP summarily denied appellant's request for reconsideration without complying with the review requirement of FECA and its implementing regulations.¹⁵ As noted, section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹⁶ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the director of OWCP shall contain findings and facts and a statement of reasons.¹⁷ As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.¹⁸ In denying appellant's August 11, 2020 reconsideration request, OWCP noted that appellant submitted duplicate documents and summarily concluded that the evidence failed to demonstrate clear evidence of error. The September 15, 2020 decision simply noted: "You did not present clear evidence of error.... The basis for this decision is." However, OWCP did not review the evidence submitted following its last merit decision and did not make findings explaining the basis of its decision.¹⁹

¹² *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 6 at Chapter 2.1602.5(a) (February 2016).

¹³ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹⁴ 20 C.F.R. § 10.607(b); *S.C.*, Docket No. 20-1537 (issued April 14, 2021); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *see Debra McDavid*, 57 ECAB 149 (2005).

¹⁵ *See Order Remanding Case, W.D.*, Docket No. 20-0859 (issued November 20, 2020); *Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *Order Remanding Case, T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607(b).

¹⁶ 5 U.S.C. § 8124(a).

¹⁷ 20 C.F.R. § 10.126.

¹⁸ Federal (FECA) Procedure Manual Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

¹⁹ *See T.N.*, Docket No. 21-0274 (issued July 9, 2021); *see also Order Remanding Case, J.F.*, Docket No. 21-0407 (issued November 10, 2021); *C.G.*, Docket No. 20-0051 (issued June 29, 2020); *R.T.*, Docket No. 19-0604 (issued September 13, 2019).

Thus, the Board finds that OWCP did not comply with the review requirements of FECA and its implementing regulations.²⁰ Accordingly, appellant could not understand the precise defect of the claim, *i.e.* whether she had demonstrated clear evidence that OWCP's last merit decision was erroneous.²¹ The Board will, therefore, set aside OWCP's September 15, 2020 decision and remand the case for an appropriate decision, with findings of fact and a statement of reasons, regarding appellant's untimely reconsideration request. Accordingly,

IT IS HEREBY ORDERED THAT the September 15, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this order of the Board.

Issued: February 16, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

²⁰ *Id.*

²¹ OWCP's regulations and 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(a), if the claimant's request demonstrates clear evidence of error on the part of OWCP. Federal (FECA) Procedure Manual, Part 2 – Claims, *Reconsiderations*, Chapter 2.1602.5(a) (February 2016).