



## **FACTUAL HISTORY**

On January 30, 2017 appellant, then a 51-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she strained her middle and lower back when lifting a tray of mail while in the performance of duty. She stopped work on January 30, 2017.

In a February 8, 2017 initial evaluation report, Dr. Azim Karim, a physician specializing in family medicine, reported that he treated appellant for a work-related injury on January 30, 2015. He provided examination findings and diagnosed lumbosacral radiculopathy, lumbar degenerative disc disease, acute lumbar disc herniation, acute lumbar strain and obesity.

Appellant came under the treatment of Dr. Steven B. Inbody, a Board-certified neurologist, from February 27 through July 5, 2017, who diagnosed sprain of the ligaments of the thoracic spine and sprain of the ligaments of the lumbar spine caused by lifting a mail tray at work on January 30, 2017. Dr. Inbody opined that appellant was totally disabled from work due to the above work-related conditions.

On March 15, 2017 OWCP accepted appellant's claim for sprain of the ligaments of the thoracic spine and sprain of the ligaments of the lumbar spine.

On April 12, 2017 appellant filed a claim for compensation (Form CA-7) for disability from work, commencing March 18, 2017, as a result of her accepted employment injury.<sup>2</sup>

In a June 2, 2017 report, Dr. Inbody requested that appellant's claim be expanded to include sciatic nerve injury at the right and left hip, cervical sprain of the ligaments and joints, brachial neuritis, and cervico-cranial syndrome as causally related to the January 30, 2017 work incident. He further requested approval of medical disability beginning January 30, 2017.

On July 6, 2017 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. Nathan Hammel, a Board-certified orthopedist serving as the district medical adviser (DMA). In a July 31, 2017 report, Dr. Hammel noted his disagreement with Dr. Inbody's assessment that the additional claimed neck and arm conditions were causally related to the January 30, 2017 accepted work incident. He advised that the findings were inconsistent and there was no clear causal link for the neck and arm conditions and no mechanical possibility of the January 30, 2017 incident leading to sciatic nerve injuries.

By decision dated August 3, 2017, OWCP denied appellant's claim for disability from work, commencing March 18, 2017, and also denied the expansion of the acceptance of her claim to include additional conditions.

OWCP subsequently received additional evidence. A January 30, 2017 magnetic resonance imaging (MRI) scan of the lumbar spine revealed mild degenerative disc changes at L2-3 and L3-4, moderate degenerative disc changes with foraminal narrowing at L4-5, and mild degenerative disc changes at L5-S1. An electromyogram (EMG) and nerve conduction velocity (NCV) study dated March 23, 2017 revealed neurovascular compression of the peroneal branch of

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<sup>2</sup> Appellant thereafter filed multiple CA-7 forms for disability beginning March 18, 2017.

the left sciatic nerve at the greater sciatic notch of the left hip and tibial branch of the right sciatic nerve at the greater sciatic notch of the right hip.

On July 19, 2018 appellant requested reconsideration.

On January 8, 2019 OWCP advised that a conflict in medical opinion evidence existed between Dr. Inbody, appellant's treating physician, and Dr. Hammel, OWCP's DMA, regarding expansion of the acceptance of her claim to include additional conditions, and whether she had disability from work due to the accepted employment injury.

On February 5, March 13, and April 11, 2019 OWCP referred appellant to Dr. David Vanderweide, a Board-certified orthopedist, for an impartial medical evaluation to resolve the conflict in medical opinion between Dr. Inbody and Dr. Hammel. Appellant failed to attend the evaluation.

In a letter dated May 7, 2019, appellant asserted that there was a conflict of interest between Dr. Inbody and the impartial medical examiner (IME), Dr. Vanderweide that would cause bias in her case. She additionally indicated that the IME's office was 120 miles round trip from her home and she could not ride long distance.

By decision dated June 24, 2019, OWCP denied modification of the August 3, 2017 decision.

On October 17, 2019 appellant requested reconsideration of the June 24, 2019 decision. She submitted reports from Dr. Inbody dated July 12 through September 6, 2019.

By decision dated January 15, 2020, OWCP denied modification of the June 24, 2019 decision.

OWCP received additional evidence, including a January 30, 2017 MRI scan of the thoracic spine that revealed minimal disc bulging in the upper thoracic spine (not unusual for appellant's age), advanced disc degeneration, and spondylosis in the lower cervical spine.

Appellant was treated by Dr. Ajay Aggarwal, a Board-certified anesthesiologist, on November 14, 2019, February 6, March 5, and 20, 2020, for middle and low back pain that began on January 30, 2017 while lifting trays of mail at work. Dr. Aggarwal diagnosed sprain of ligaments of thoracic spine and sprain of ligaments of the lumbar spine. He recommended warm moist heat, physical therapy, and lumbar transforaminal epidural steroid injections. In a duty status report (Form CA-17) dated February 6, 2020, Dr. Aggarwal diagnosed thoracic sprain and lumbar sprain and advised that appellant was totally disabled from work.

A June 3, 2020 report from Dr. Inbody noted that appellant remained symptomatic and disabled from her injuries. Dr. Inbody diagnosed sprain of the ligaments of the thoracic and lumbar spine, lesion of sciatic nerve right and left lower limbs, cervical sprain of ligaments and joints, cervicocranial syndrome, and brachial plexus disorders. He noted that appellant was stable without objective changes and remained incapacitated from work.

A computerized tomography (CT) scan of the abdomen and pelvis dated September 15, 2020 revealed multiple hepatic cysts, endplate irregularity surrounding L5-S1, which may be degenerative in nature, and moderate sclerosis at L4-5.

On January 20, 2021 appellant requested reconsideration of the January 15, 2020 decision. In a January 14, 2021 statement, she indicated that, due to a conflict of opinion in her case, she was referred to an IME. Appellant's treating physician, Dr. Inbody, recommended that she not attend the examination due to a conflict of interest. She requested to be referred to another IME.

By decision dated February 25, 2021, OWCP denied appellant's reconsideration request, 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.<sup>3</sup> 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.<sup>4</sup> Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).<sup>5</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>6</sup>

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

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<sup>3</sup> 5 U.S.C. § 8128(a). *See also* *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

<sup>4</sup> 20 C.F.R. § 10.607(a).

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

<sup>6</sup> *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).

<sup>7</sup> *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).

<sup>8</sup> *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 (September 2020).

<sup>9</sup> *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).

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>10</sup> 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 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.<sup>11</sup>

### 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 regulations<sup>12</sup> and procedures<sup>13</sup> 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.<sup>14</sup> The most recent merit decision was OWCP's January 15, 2020 decision, which denied modification of the decision denying appellant's claim for disability commencing March 18, 2017 and the expansion of the acceptance of her claim. As OWCP received her request for reconsideration on January 20, 2021, more than one year after the January 15, 2020 merit decision, the Board finds that it was untimely filed. Consequently, she must demonstrate clear evidence of error on the part of OWCP.

The Board finds that the evidence of record is insufficient to demonstrate clear evidence of error. Appellant submitted reports from Dr. Aggarwal dated November 14, 2019, and February 6, and March 5 and 20, 2020, who treated her for middle back and low back pain that began on January 30, 2017 while lifting trays of mail at work. He diagnosed sprain of ligaments of thoracic spine and sprain of ligaments of the lumbar spine. Similarly, in a Form CA-17 dated February 6, 2020, Dr. Aggarwal diagnosed thoracic sprain and lumbar sprain and advised that appellant was totally disabled from work. A June 3, 2020 report from Dr. Inbody noted diagnoses and indicated

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<sup>10</sup> *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 5 at Chapter 2.1602.5(a) (September 2020).

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

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

<sup>13</sup> *Supra* note 5 at Chapter 2.1602.4 (September 2020); *see L.A.*, Docket No. 19-0471 (issued October 29, 2019); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

<sup>14</sup> 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

that appellant was still symptomatic and remained incapacitated from work. Appellant also submitted an MRI scan of the thoracic spine dated January 30, 2017 and a CT scan of the abdomen and pelvis dated September 15, 2020. However, none of these reports addressed causal relationship between appellant's disability from work commencing March 18, 2017 and the accepted employment injuries. They also failed to address the expansion of appellant's claim. This evidence, therefore, does not raise a substantial question as to the correctness of OWCP's January 15, 2020 merit decision.<sup>15</sup> None of the evidence manifests on its face that OWCP committed an error in denying appellant's claim for disability commencing March 18, 2017 or expansion of her claim. Thus, the evidence is insufficient to demonstrate clear evidence of error.<sup>16</sup>

### **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 February 25, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 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

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<sup>15</sup> *T.C.*, Docket No. 19-1709 (issued June 5, 2020); *B.W.*, Docket No. 19-0626 (issued March 4, 2020).

<sup>16</sup> *J.C.*, Docket No. 20-1250 (issued May 24, 2021); *W.D.*, Docket No. 19-0062 (issued April 15, 2019).