United States Department of Labor
Employees' Compensation Appeals Board

E.K., Appellant	)	
	)	
and	)	**Docket No. 21-1144**
	)	**Issued: February 3, 2022**
U.S. POSTAL SERVICE, MAIN POST OFFICE, Orland Park, IL, 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
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On July 20, 2021 appellant filed a timely appeal from a June 21, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated February 24, 2020, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the June 21, 2021 decision, OWCP received additional evidence. 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*.

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

On April 4, 2016 appellant, then a 28-year-old city carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on March 29, 2016 she sprained her left ankle and wrist when she fell while delivering mail in the performance of duty. She stopped work on March 29, 2016 and did not return. OWCP accepted her claim for left ankle sprain, left wrist sprain, left carpal tunnel syndrome, aggravation of radial styloid tenosynovitis, and aggravation of plantar fascial fibromatosis. It paid appellant wage-loss compensation on the supplemental rolls, effective May 14, 2016, and on the periodic rolls, effective April 30, 2017.

In a work status form dated March 27, 2019, Dr. David N. Garras, a Board-certified orthopedic surgeon, found that appellant could return to modified employment, restricted to "sit down duty" and no more than 30 minutes of driving.

On April 26, 2019 the employing establishment offered appellant a position as a modified city carrier. The position required sitting for eight hours per day, performing data entry on a computer for four hours per day, and performing fine manipulation and grasping for four hours per day.

On June 18, 2019 Dr. Garras opined that appellant could return to "sit down duty" with no driving over 30 minutes due to problems with her left foot/ankle and left wrist.

By letter dated June 18, 2019, OWCP advised appellant that it had determined that the April 26, 2019 offered position was suitable and afforded her 30 days to accept the position or provide reasons for her refusal. It informed appellant that an employee who refused an offer of suitable work without cause was not entitled to wage-loss or schedule award compensation.

On August 2, 2019 OWCP advised appellant that her physician had not restricted her ability to drive to and from work. It also advised that her reasons for refusing the position were not deemed justified and afforded her an additional 15 days to accept the job.

Thereafter, appellant submitted progress reports from Dr. Garras dated February 12 through May 22, 2019. Dr. Garras found that appellant was status post left de Quervain's release with continued first dorsal compartment pain, left carpal tunnel syndrome, and left plantar fasciitis. He diagnosed left carpal tunnel syndrome, radial styloid (de Quervain's) tenosynovitis, plantar fascial fibromatosis, and an acquired short Achilles tendon of the left ankle. Dr. Garras recommended surgery.

In a September 9, 2019 e-mail, the employing establishment indicated that the offered position remained available and that it did not require driving, noting that a bus stop was near the facility.

By decision dated September 17, 2019, OWCP terminated appellant's wage-loss compensation and entitlement to a schedule award, pursuant to 5 U.S.C. § 8106(c)(2), due to her refusal of suitable work.

On September 23, 2019 appellant requested reconsideration.

In a September 23, 2019 statement, appellant related that she had accepted the offered position on August 13, 2019. She advised that, when she arrived at work on August 19, 2019, she was told that there was no work available and to contact C.V., the injury compensation specialist at the employing establishment. On September 23, 2019 C.V. told appellant that she would offer her another job.

Appellant submitted a copy of the April 26, 2019 job offer with her signed acceptance.

On October 18, 2019 OWCP authorized a left carpal tunnel release and a left partial plantar fasciectomy.

In a statement dated November 6, 2019, C.V. related that she had no record of appellant accepting the offered position. She advised that appellant had refused the job offer. C.V. asserted that there was no evidence that she had reported to work or been told to leave. Regarding a conversation with appellant on September 23, 2019, she related that "I have reviewed her file and do not see evidence of this conversation on September 23, 2019." C.V. indicated that on October 22, 2019 appellant told her that she was having surgery on November 9, 2019 and that she would contact her after her recovery.

C.V. submitted a copy of the April 26, 2019 job offer, which appellant had refused on April 29, 2018. Appellant indicated that the driving to the location was outside of her restrictions.

In a statement dated November 30, 2019, appellant related that she was submitting a log of telephone calls verifying that she spoke with C.V. on September 23, 2019. She related that she also spoke with C.V. on October 22, 2019 about her surgery scheduled for November 9, 2019. C.V. told appellant that she did not want her returning to work if she was scheduled for surgery and to contact her after she had recovered. Appellant submitted a log of telephone calls made from August 28 to September 27, 2019.

By decision dated December 18, 2019, OWCP denied modification of its September 17, 2019 decision. It found that appellant had not submitted sufficient evidence to establish that she had accepted the job offer and reported to work, noting that the employing establishment advised that it had no record of her acceptance of the position or that she had shown up for work.

On January 1, 2020 appellant requested reconsideration.

In an undated statement received by OWCP on January 1, 2020, appellant related that she had received an April 2019 letter instructing her to return to work. She told her physician that the job offer was not within her restrictions because of the distance from her home and he told her to refuse the position. Appellant's physician provided a June 18, 2019 letter with her restrictions. Appellant asserted that she had received a letter dated August 6, 2019 indicating that she had 15 days to accept the job offer, so she signed the job offer and mailed it to the employing

establishment. She claimed that on August 19, 2019 she arrived at the employing establishment and was denied entry as her name was not on the roster. Appellant was instructed by security to called an unknown person in the general office who told her that they were not expecting her and that there was no work available. The person told her to contact C.V., but she was out of the office. On September 23, 2019 C.V. told her that she would try to find another job offer. On December 23, 2019 appellant had asked C.J., an employee, to put in writing that the job was not available, but he had refused.

By decision dated February 24, 2020, OWCP denied modification of its December 18, 2019 decision.

In a June 15, 2020 certificate to return to work, Dr. Daria Terrell, an orthopedic surgeon, diagnosed left carpal tunnel syndrome and found that appellant could perform light to sedentary work pushing or pulling with the left hand up to two pounds. In a certification form of even date, she indicated that appellant could continuously lift and carry up to two pounds and intermittently lift and carry up to five pounds for five hours per day. Dr. Terrell further found that she could perform fine manipulation up to one hour per day. She continued to submit reports describing her treatment of appellant and finding work restrictions.

On December 23, 2020 Dr. Terrell advised that she was treating appellant for bilateral carpal tunnel syndrome and found that she could return to work on December 24, 2020 for four hours per day with restrictions. In a duty status report (Form CA-17) dated February 1, 2021, she provided work restrictions. In an April 14, 2021 progress report, Dr. Terrell diagnosed left upper extremity radicular pain and left carpal tunnel syndrome.

On April 16, 2021 Dr. Raymond R. Montoya, a podiatrist, diagnosed left chronic heel pain, equinus deformities of the feet bilaterally, and left foot pain. On May 4, 2021 he advised that an MRI scan had demonstrated findings of acute plantar fasciitis and calcaneal enthesis and trace retrocalcaneal bursitis.

On June 2, 2021 appellant requested reconsideration. In a statement of even date, she related that, after receiving the August 2, 2019 letter from OWCP indicating that she had 15 days to accept the position, she had signed the job offer and mailed it to OWCP at the employing establishment. On August 19, 2019 appellant reported to work, but people at the work location had told her that they had no information about her or available work.

By decision dated June 21, 2021, 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. For instance, a request for reconsideration must be received within one year of the date of OWCP's

[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).

decision for which review is sought.[4] Timeliness is determined by the document receipt date (*i.e.*, 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] 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.[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. 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.[12] The Board makes an independent

[4] 20 C.F.R. § 10.607(a).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

[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 5 at Chapter 2.1602.5 (September 2020).

[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).

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

[12] *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 5 at Chapter 2.1602.5(a) (September 2020).

determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.[13]

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, as 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 OWCP's decision for which review is sought.[14] As appellant's request for reconsideration was not received until June 2, 2021, more than one year after the issuance of OWCP's last merit decision dated February 24, 2020, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in its February 24, 2020 decision.[15]

The Board further finds that appellant has not demonstrated clear evidence of error. The underlying issue is whether OWCP properly terminated her wage-loss compensation, commencing September 17, 2019, due to her refusal of suitable work, pursuant to 5 U.S.C. § 8106(c)(2). The Board finds that the arguments and evidence submitted by appellant in support of her request for reconsideration do not raise a substantial question as to the correctness of the termination of her compensation.[16]

On reconsideration, appellant contended that she had accepted the offered position after she received OWCP's August 2, 2019 letter providing her with 15 days to accept the position. She asserted that she had returned to work on August 19, 2019, but was told that there was no work available. OWCP, however, previously considered appellant's argument that she had accepted the position and reported to work, but found that there was no evidence supporting her contention. It noted that the employing establishment had advised that it had no documentation that she had accepted the position or attempted to return to work on August 19, 2019. Evidence or argument which duplicates or repeats evidence already in the case record does not raise a substantial question as to the correctness of OWCP's decision.[17] Appellant has not submitted any new evidence supporting that she returned to work at the employing establishment prior to OWCP's termination of her compensation for refusing suitable work and, thus, has not established clear evidence of error.[18]

The record further contains medical reports and CA-17 forms from Dr. Terrell providing work restrictions and reports from Dr. Montoya discussing his treatment of appellant's foot

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

[14] 20 C.F.R. § 10.607(a).

[15] *Id*. at § 10.607(b); *S.M.*, Docket No. 16-0270 (issued April 26, 2016).

[16] *See S.D.*, Docket No. 17-1450 (issued January 8, 2018); *Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

[17] *See A.M.*, Docket No. 17-1434 (issued January 2, 2018); *D.B.*, Docket No. 16-0539 (issued May 26, 2016).

[18] *S.D.*, *supra* note 16.

condition. The newly submitted medical evidence does not demonstrate clear error on the part of OWCP in its suitable work determination. As discussed, 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. 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.[20] The medical evidence fails to manifests on its face that OWCP committed an error in terminating appellant's wage-loss compensation and entitlement to a schedule award for refusing suitable work and, thus, is insufficient to demonstrate clear evidence of error.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim as it was untimely filed and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[19] *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).

[20] *Id.*; *see also Leona N. Travis*, 43 ECAB 227 (1999).