

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On February 12, 2013 appellant, then a 27-year-old postal support employee clerk, filed a traumatic injury claim (Form CA-1) alleging an injury to his left shoulder on September 6, 2012 when lifting and pitching parcels into designated locations while in the performance of duty. He did not stop work.

By decision dated March 29, 2013, OWCP denied the claim, finding that, while the September 6, 2012 employment incident had occurred as alleged, the medical evidence of record was insufficient to establish left shoulder, cervical, and/or thoracic conditions causally related to the employment incident.

Appellant subsequently requested reconsideration and submitted additional medical evidence. By decisions dated August 2, 2013 and August 29, 2014, OWCP denied modification. Appellant, through counsel, appealed to the Board. By decision dated April 16, 2015, the Board affirmed OWCP's August 29, 2014 decision.

On April 12, 2016 appellant requested reconsideration and submitted additional medical evidence.

Appellant submitted additional medical evidence. By decision dated June 15, 2016, OWCP denied modification. Appellant, through counsel, appealed to the Board on July 19, 2016. By decision dated May 5, 2017, the Board affirmed OWCP's June 15, 2016 decision, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's medical conditions and the accepted September 6, 2012 employment incident.

On August 22, 2017 appellant requested reconsideration.

By decision dated November 20, 2017, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant a merit review.

OWCP subsequently received additional evidence.

On June 6, 2018 appellant requested reconsideration, arguing that his request for reconsideration was not actually untimely because it had been mailed on April 20, 2018 from Citrus Height, California, by certified Priority Mail, to San Francisco, California on April 24, 2018. By decision dated August 29, 2018, OWCP summarily denied appellant's June 6, 2018 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. Appellant appealed to the Board on March 21, 2019. By decision dated September 13, 2019, the Board set aside OWCP's August 29, 2018 decision and remanded the

³ Docket No. 15-256 (issued April 16, 2015); Docket No. 16-1518 (issued May 5, 2017); Docket No. 19-0604 (issued September 13, 2019); Docket No. 20-0298 (issued August 6, 2020).

case for an appropriate decision on appellant's untimely request for reconsideration because it had not discharged its responsibility to set forth findings of fact and a clear statement of reasons for its disposition.

By decision dated October 15, 2019, OWCP again denied appellant's June 6, 2018 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It noted that, while he had submitted evidence in support of his argument that the reconsideration request was timely filed, the evidence indicated that he mailed a package *via* certified Priority Mail to a San Francisco, California address on April 20, 2018 when requests for reconsideration were to be sent to its central mailroom in London, Kentucky. Appellant's request for reconsideration was forwarded to London, Kentucky for processing, but not received there until June 6, 2018.

On December 5, 2019 appellant appealed to the Board. By decision dated August 6, 2020, the Board affirmed OWCP's October 15, 2019 decision, finding that appellant's June 6, 2018 reconsideration was untimely filed and failed to demonstrate clear evidence of error.⁴

On August 4, 2021 appellant again requested reconsideration.

Appellant submitted a medical report dated July 23, 2021 from Dr. Champlin. Dr. Champlin reiterated earlier findings that appellant's diagnosed medical conditions were causally related to the accepted September 6, 2012 employment incident.

By decision dated August 18, 2021, OWCP denied appellant's August 4, 2021 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.⁵ 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.⁶ Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).⁷ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁸

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

⁴ Docket No. 20-0298 (issued August 6, 2020).

⁵ 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).

⁶ 20 C.F.R. § 10.607(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

⁸ *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).

decision was in error.⁹ 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.¹⁰ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹¹

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹² 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.¹³

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.¹⁴ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁵

ANALYSIS

The Board finds that OWCP properly denied appellant's August 4, 2021 request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

OWCP received appellant's request for reconsideration on August 4, 2021, which was more than one year after the Board's May 5, 2017 merit decision. The right to reconsideration

⁹ 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).

¹⁰ *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 7 at Chapter 2.1602.5 (September 2020).

¹¹ *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

¹² *S.C.*, Docket No. 18-0126 (issued May 14, 2016).

¹³ *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

¹⁴ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 7 at Chapter 2.1602.5(a) (September 2020).

¹⁵ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

within one year also accompanies any subsequent merit decision on the issues, including any merit decision by the Board.¹⁶ As appellant's request was untimely filed, he must demonstrate clear evidence of error on the part of OWCP in its June 15, 2016 decision.¹⁷

In support of his request for reconsideration, appellant submitted a July 23, 2021 medical report from Dr. Champlin, who reiterated his earlier opinion that appellant's diagnosed medical conditions were causally related to the September 6, 2012 employment incident. The Board finds that Dr. Champlin's report is insufficient to demonstrate clear evidence of error as he merely reiterates his opinion and findings found in medical reports that were previously of record and reviewed by OWCP.

As noted, clear evidence of error is intended to represent a difficult standard.¹⁸ Even a detailed, well-rationalized medical report, which if submitted before the denial was issued, would have created a conflict in medical evidence requiring further development is insufficient to demonstrate clear evidence of error. It is not enough to show that evidence could be construed so as to produce a contrary conclusion. Instead, the evidence must shift the weight in appellant's favor.¹⁹

The Board thus finds that appellant's request for reconsideration does not demonstrate on its face that OWCP committed error in its June 15, 2016 decision, which the Board affirmed on May 5, 2017.²⁰ Therefore, OWCP properly determined that appellant's request for reconsideration did not demonstrate clear evidence of error in its June 15, 2016 decision.

CONCLUSION

The Board finds that OWCP properly 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.

¹⁶ *Supra* note 8 at Chapter 2.1602.4(b) (February 2016).

¹⁷ 20 C.F.R. § 10.607(b).

¹⁸ *Supra* note 8 at Chapter 2.1602.5(a) (September 2020); *see also J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹⁹ *M.E.*, Docket No. 18-1442 (issued April 22, 2019).

²⁰ *See S.F.*, Docket No. 09-0270 (issued August 26, 2009).

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 20, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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