

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration, finding that it was untimely filed and that the request for reconsideration failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On May 30, 2020 appellant, then a 49-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on August 12, 2018, he injured his right shoulder rotator cuff when loading a heavy package into a mail truck, while in the performance of duty. He did not stop work.

In a development letter dated June 5, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

On July 7, 2020 OWCP received a response to OWCP's development questionnaire, wherein appellant explained that on August 12, 2018, after injuring his shoulder, he sat down in pain for a few minutes and then reported his injury to his supervisor. Appellant also stated that he could not use his right arm for a few days after the incident and subsequently sought medical care on August 14, 2018. He explained that he did not file a claim immediately because he was afraid of being passed up for a promotion.

In a medical report dated May 14, 2020 from Dr. Harry A. Hoyen, a Board-certified orthopedic surgeon, specializing in hand surgery. Dr. Hoyen noted that appellant had undergone left rotator cuff repair in May 2019, and that his current x-rays revealed right shoulder large supraspinatus tear.

By decision dated July 13, 2020, OWCP accepted that the August 12, 2018 employment incident occurred, as alleged, but denied appellant's claim because appellant failed to establish a causal relationship between the diagnosed medical condition and the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Subsequently, OWCP received an x-ray report dated August 14, 2018 from Dr. Zahid R. Shah, a Board-certified radiologist. Dr. Shah noted there is evidence to suggest a remote fracture and narrowing of subacromial space in the secondary rotator cuff.

In a report dated August 14, 2018, Dr. Xiaozhou Tang, a family medicine specialist, related that appellant developed right shoulder pain two weeks' prior when he lifted a heavy box at work. He noted findings regarding the right shoulder of remote fracture involving the greater tuberosity, narrowing of subacromial space secondary to rotator cuff arthropathy with impingement syndrome.

In progress notes dated January 22, 2020, Dr. Stephen L. Cheng, a Board-certified orthopedic surgeon, related that appellant was seen for right shoulder pain which began on January 9, 2020 while performing exercises at home. He also noted that appellant had a prior

work-related right shoulder strain, which appellant related had never fully resolved. Dr. Cheng diagnosed right shoulder strain.

OWCP received a magnetic resonance imaging (MRI) scan report dated March 13, 2020 from Dr. Vikas Jain, a Board-certified radiologist. Dr. Jain noted that appellant injured his right shoulder in 2018 and it flared up after a new strain which occurred in January 2020. He diagnosed a full-thickness complete tear with retraction of the supraspinatus tendon.

Appellant submitted an x-ray report of his right shoulder dated May 14, 2020 from Dr. Ignacio Chiong, a Board-certified radiologist. Dr. Chiong diagnosed a remote fracture deformity at the greater tuberosity and findings of chronic rotator cuff arthropathy.

In a letter dated October 8, 2020, Dr. Hoyan related that appellant injured his right shoulder while lifting a box over his head at work in August 2018. He stated that this directly resulted in an injury to appellant's rotator cuff. Dr. Hoyan also noted that appellant subsequently injured his left shoulder which necessitated treatment prior to the treatment of appellant's right shoulder.

On July 14, 2021 appellant requested reconsideration of OWCP's July 13, 2020 decision.

By decision dated September 23, 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 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 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

³ 5 U.S.C. § 8128(a); *see 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).

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

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 required further development, is not clear evidence of 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 13, 2020. As appellant's request for reconsideration was not received by OWCP until July 14, 2021, more than one year after the July 13, 2020 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

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); *supra* note 5 at Chapter 2.1602.5(a) (September 2020).

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).

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).

The Board further finds that appellant has not demonstrated clear evidence of error in the denial of his claim.

In support of his untimely reconsideration request, appellant submitted medical reports from Drs. Shah, Tang, Cheng, Jain, and Chiong which addressed appellant's right shoulder conditions. The physicians did not, however, provide an opinion regarding causal relationship. These reports therefore do not raise a substantial question regarding the correctness of the July 13, 2020 decision denying appellant's claim.¹⁵

OWCP also received an October 8, 2020 report from Dr. Hoyan. Although Dr. Hoyan addressed the issue of causal relationship in his October 8, 2020 report, evidence such as a detailed, well-rationalized medical report that, if submitted before the denial was issued, would have required further development, is insufficient to demonstrate clear evidence of error.¹⁶

The Board thus finds that appellant has not raised an argument or submitted any evidence that manifests on its face that OWCP committed an error in denying his traumatic injury claim. Consequently, OWCP properly found that his July 14, 2021 request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.¹⁷

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.

¹⁵ See *D.R.*, Docket No. 21-0061 (issued May 24, 2021).

¹⁶ *W.R.*, Docket No. 20-1197 (issued February 3, 2021); *A.R.*, Docket No. 15-1598 (issued December 7, 2015).

¹⁷ *O.K.*, Docket No. 21-708 (issued September 29, 2021); *S.C.*, Docket No. 19-1424 (issued September 15, 2020).

ORDER


IT IS HEREBY ORDERED THAT the September 23, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

A handwritten signature in dark ink, appearing to read 'James D. McGinley', is written over the printed name of the Alternate Judge.