

² 5 U.S.C. § 8101 *et seq.*

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 July 19, 2019 appellant, then a 39-year-old transportation security screener, filed an occupational disease claim (Form CA-2) alleging that she developed post-traumatic stress disorder (PTSD), anxiety disorder, depression, and panic attacks due to factors of her federal employment. She explained that she was among the first screeners hired following the September 11, 2001 terrorist attacks, and that her job duties included detecting bombs in luggage and guns through x-ray machines, which aggravated her PTSD. Appellant noted that she first became aware of her claimed condition on December 23, 1997 and realized its relationship to her federal employment on July 9, 2019 after treating with her psychiatrist. She contended that the employing establishment had actual knowledge of her alleged condition within 30 days after it occurred, but did not report it or refer her to a workers' compensation representative. Appellant stopped work on July 26, 2003.

In support of her claim, appellant submitted undated statements clarifying that she first became aware that her conditions were related to her federal employment on July 8, 2019, not December 23, 1997. She also indicated that she was diagnosed with PTSD in 2011, following a suicide attempt, and that her anxiety, depression, and panic attacks made it difficult for her to maintain employment or to complete school.

In a letter dated July 17, 2019, H.H., an employing establishment human resources specialist, recounted a telephone call with appellant that occurred on July 16, 2019. He noted that she related a history of severe anxiety related to exposure to explosives during military service, that she worked for the employing establishment between 2002 to 2003, and that from "day one" she experienced severe anxiety due to her job duties, including looking for explosives. H.H. noted that appellant alleged that she had reported these concerns to her supervisor, whose name she could not recall, subsequently took time off from work due to anxiety, and was eventually terminated due to attendance issues.

In an August 15, 2019 letter, H.H. controverted appellant's claim, asserting that she failed to file her occupational disease claim within the three-year time limitation. He noted that she was employed from November 17, 2002 through July 11, 2003 and denied that the employing establishment had any knowledge of her claimed conditions within 30 days after it occurred.

By decision dated August 23, 2019, OWCP denied appellant's occupational disease claim, finding that it was untimely filed pursuant to 5 U.S.C. § 8122. It found that her claim had not been filed within the three-year filing requirement of the date of last exposure or from the perspective of "latent" disability, noting that the evidence suggested that she knew or should have known her condition was caused or aggravated by her work environment no later than June 2003. OWCP further found that the evidence of record did not establish that appellant's supervisor had actual

knowledge of an employment injury or that written notice of the injury had been provided within 30 days.

On January 12, 2021 appellant requested reconsideration of OWCP's August 23, 2019 decision. In support of her request, she submitted an undated statement noting that she had symptoms of PTSD while working for the employing establishment in 2002 and 2003, but was not aware of her PTSD diagnosis until after her employment ended. Appellant noted that she had applied for service-connected disability benefits for PTSD through the Department of Veterans Affairs (VA), and she enclosed a copy of a December 14, 2020 decision by the Board of Veterans' Appeals (BVA), which granted her claim for service-connected PTSD.

By decision dated February 2, 2021, OWCP denied appellant's reconsideration request finding that it was untimely filed and failed to demonstrate clear evidence of error.

OWCP continued to receive evidence, including a November 6, 2021 report by Dr. Ray Kamoo, a licensed clinical psychologist, who evaluated appellant on October 14, 2021. Dr. Kamoo noted that she was abused as a child, experienced PTSD symptoms after serving in the military, and began working for the employing establishment in 2002, which included bomb detection of luggage and people. He indicated that appellant related that these job duties made her anxious and scared and aroused unresolved trauma, which led to panic attacks and missed time from work due to anxiety. Dr. Kamoo opined that her PTSD symptoms originated from her childhood trauma and were triggered by her military service and later by her duties with the employing establishment.

On January 12, 2022 appellant, through counsel, again requested reconsideration of the August 23, 2019 decision. In connection with the request, counsel reiterated that the claim was timely filed from a "latent" disability perspective and argued the merits of the claim.

By decision dated January 26, 2022, OWCP denied appellant's reconsideration request finding that it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.³ Timeliness is determined by the document receipt date of the request for reconsideration as is indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS).⁴ The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the discretionary authority granted OWCP under section 8128(a) of FECA.⁵

³ 20 C.F.R. § 10.607(a).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁵ *G.L.*, Docket No. 18-0852 (issued January 14, 2020).

OWCP may not deny a request for reconsideration solely because it was untimely filed. When a request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether the request demonstrates clear evidence of error.⁶ 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 claimant's request for reconsideration demonstrates clear evidence of error on the part of OWCP.⁷

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue decided by OWCP. The evidence must be positive, precise, and explicit, and it must manifest on its face that OWCP committed an error.⁸ Evidence that does not raise a substantial question as to the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.⁹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁰ This entails a limited review by OWCP of the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.¹¹ The Board makes an independent determination as to whether a claimant has demonstrated clear evidence of error on the part of OWCP such that it abused its discretion in denying merit review in the face of such evidence.¹²

OWCP's procedures further provide that the term clear evidence of error is intended to represent a difficult standard.¹³ The claimant must present evidence that on its face shows that OWCP made an error (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized medical report that, 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

⁶ 20 C.F.R. § 10.607(b); *T.C.*, Docket No. 19-1709 (issued June 5, 2020); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁷ *Supra* note 3. *See also supra* note 4 at Chapter 2.1602.5a (September 2020).

⁸ 20 C.F.R. § 10.607(b); *B.W.*, Docket No. 19-0626 (issued March 4, 2020); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

⁹ *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁰ *See G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

¹¹ *Id.*

¹² *Id.*

¹³ *R.K.*, Docket No. 19-1474 (issued March 3, 2020).

¹⁴ *W.B.*, Docket No. 20-1197 (issued February 3, 2021); *A.R.*, Docket No. 15-1598 (issued December 7, 2015).

ANALYSIS

The Board finds that 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.

OWCP received appellant's request for reconsideration on January 12, 2022, more than one year after the last merit decision dated August 23, 2019. Her request was therefore untimely filed. Consequently, appellant must demonstrate clear evidence of error.¹⁵

The Board further finds that appellant has not demonstrated clear evidence of error. The underlying issue is whether her claim for compensation was filed within the applicable time limitation provisions of 5 U.S.C. § 8122(a).

In connection with her untimely request for reconsideration, appellant, through counsel, argued that her claim was timely filed from a "latent" disability perspective and that the evidence of record was sufficient to require further development by OWCP. She also submitted a November 6, 2021 narrative psychological report by Dr. Kamoo. The Board finds that Dr. Kamoo's report and counsel's argument do not demonstrate clear evidence of error, because they do not demonstrate that OWCP committed an error in finding that appellant's claim was not filed within the applicable time limitation provisions of 5 U.S.C. § 8122(a), nor did they raise a substantial question as to the correctness of OWCP's August 23, 2019 decision.¹⁶

As noted, the term clear evidence is a difficult standard and it is not enough to show that the evidence could be construed to produce a contrary conclusion.¹⁷ None of the evidence submitted by appellant in connection with her untimely reconsideration request manifests on its face that OWCP committed an error in finding her claim untimely.¹⁸ Appellant has not submitted evidence of sufficient probative value to raise a substantial question as to the correctness of OWCP's decision.¹⁹ Thus, the evidence of record is insufficient to demonstrate clear evidence of error.

The Board finds that the evidence submitted in support of the untimely request for reconsideration is insufficient to shift the weight of the evidence in favor of appellant's claim or to raise a substantial question that OWCP erred in its August 23, 2019 decision. Accordingly, the

¹⁵ *Supra* notes 5 and 6.

¹⁶ *C.D.*, Docket No. 19-1462 (issued June 26, 2020); *see also P.T.*, Docket No. 18-0494 (issued July 9, 2018).

¹⁷ *See P.T.*, *id.*

¹⁸ *T.N.*, Docket No. 18-1613 (issued April 29, 2020); *see supra* note 4 at Chapter 2.1602.5(a) (February 2016); *see also W.D.*, Docket No. 19-0062 (issued April 15, 2019); *R.M.*, Docket No. 18-1393 (issued February 12, 2019). *J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹⁹ *See J.D.*, Docket No. 19-1836 (issued April 6, 2020); *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006); *Leon N. Travis*, 43 ECAB 227 (1999).

Board finds that OWCP properly denied her reconsideration request, finding that it was untimely filed and failed 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, finding that it was untimely filed and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2019 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

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

A handwritten signature in cursive script, appearing to read "J. D. McGinley".

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