

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)
D.R., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
IMMIGRATION & CUSTOMS)
ENFORCEMENT, Laredo, TX, Employer)
_____)

Docket No. 22-0556
Issued: October 25, 2022

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 4, 2022 appellant filed a timely appeal from a January 27, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated December 17, 2020, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

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

_____)
¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 28, 2020 appellant, then a 29-year-old criminal investigator, filed an occupational disease claim (Form CA-2) alleging that he was exposed to blood when processing a crime scene in an officer-involved shooting. He noted that he first became aware of his condition and realized its relation to his federal employment on October 23, 2020. Appellant did not immediately stop work.

On October 24, 2020 Dr. Eutimio Calixto-Lopez, Board-certified in emergency medicine, examined appellant in the emergency room for occupational exposure to a risk factor. Appellant received discharge instructions for work site wellness.

In a development letter dated November 10, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. By separate development letter also dated November 10, 2020, OWCP requested additional information from the employing establishment. It afforded both parties 30 days to respond.

OWCP subsequently received a response from the employing establishment, wherein it concurred with appellant's statements relative to his claim. It noted that he provided emergency medical care to multiple subjects who sustained gunshot wounds and was exposed to blood from multiple persons for approximately six minutes before the blood could be washed off. The employing establishment further noted that, due to the emergent nature of the situation, appellant was not able to wear a mask and gloves. It related that he was a criminal investigator and a member of the Special Response Team, which was tasked to disrupt and dismantle criminal organizations. Appellant was required to be in physical shape and carry and qualify with a firearm. The employing establishment also provided a job description for a criminal investigator (special agent).

OWCP received additional evidence. In emergency room records from Dr. Calixto-Lopez dated October 24, 2020, appellant presented with blood exposure on the bilateral upper extremities. He noted that the area was irrigated and laboratory testing was conducted. Dr. Calixto-Lopez diagnosed occupational exposure to risk factor and noted that appellant was discharged in stable condition. Appellant received discharge instructions for work site wellness.

By decision dated December 17, 2020, OWCP denied appellant's occupational disease claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with his accepted employment exposure. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 21, 2022 appellant requested reconsideration. He submitted a hospital billing statement from Laredo Medical Center for services provided on October 24, 2020.

By decision dated January 27, 2022, 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.² 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.³ Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).⁴ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁵

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.⁶ 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.⁷ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.⁸

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.⁹ 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

² 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).

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.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).

⁶ *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).

⁷ *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 4 at Chapter 2.1602.5 (September 2020).

⁸ *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).

⁹ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 4 at Chapter 2.1602.5a (September 2020).

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.¹⁰

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 regulations¹¹ and procedures¹² 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.¹³ The most recent merit decision was OWCP's December 17, 2020 decision. As OWCP received his request for reconsideration on January 21, 2022, more than one year after the December 17, 2020 merit decision, the Board finds that it was untimely filed. Consequently, he must demonstrate clear evidence of error on the part of OWCP.

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP. The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹⁴ OWCP denied appellant's occupational disease claim, finding that he failed to provide a medical diagnosis in connection with the accepted employment exposure. On reconsideration, appellant submitted a hospital billing statement from Laredo Medical Center for services provided on October 24, 2020. This evidence, however, does not raise a substantial question concerning the correctness of OWCP's decision as it is not medical evidence and does not note a diagnosed medical condition.¹⁵ The Board has held that the term clear evidence of error

¹⁰ *U.C.*, Docket No. 19-1753 (issued June 10, 2020).

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

¹² *Supra* note 4 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).

¹³ 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

¹⁴ *See* 20 C.F.R. § 10.607(b); *G.G.*, *supra* note 5.

¹⁵ *See P.T.*, Docket No. 18-0494 (issued July 9, 2018).

is intended to represent a difficult standard.¹⁶ As such, the Board finds that this evidence is insufficient to demonstrate clear evidence of error in OWCP's December 17, 2020 decision.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.

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁶ *M.P.*, Docket No. 19-0200 (issued June 14, 2019).

¹⁷ A completed authorization for examination and/or treatment (Form CA-16) may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.D.*, Docket No. 22-0286 (issued June 15, 2022); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003). Further, OWCP's procedures provide: "OWCP may approve payment for medical expenses incurred even if Form CA-16 has not been issued and the claim is subsequently denied. Payment in situations meeting these criteria must be determined on a case-by-case basis." Federal (FECA) Procedure Manual, Part 3 – Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3a(3) (February 2012).