

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

C.S., Appellant)	
)	
and)	Docket No. 22-1080
)	Issued: October 26, 2022
U.S. POSTAL SERVICE, LAKE FOREST POST OFFICE, Jacksonville, FL, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 14, 2022 appellant filed a timely appeal from a June 23, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from OWCP's last merit decision, dated September 10, 2019, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.³

¹ Appellant, on appeal to the Board, indicated that she wanted to clarify the issues at oral argument. She further specified on the Application for Review (AB-1 Form), however, that she was not requesting an oral argument. Accordingly, the Board will proceed with the appeal as submitted on the record.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the June 23, 2022 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 caserecord 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 September 21, 2016 appellant, then a 29-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 11, 2016 she sustained pain in her middle back, neck, and the left side of her stomach when her vehicle was struck while in the performance of duty. She stopped work on August 11, 2016 and returned to modified employment on September 24, 2016. OWCP accepted the claim for a sprain of the ligaments of the cervical and thoracic spine. It subsequently expanded its acceptance of the claim to include a herniated cervical disc at C4-5 and cervical whiplash.

Appellant returned to her usual employment on December 5, 2017. On June 22, 2018 the employing establishment advised that she had submitted medical evidence showing additional work restrictions and questioned whether this would be considered a recurrence of disability.

By decision dated October 17, 2018, OWCP found that appellant had not established a recurrence of disability, beginning June 22, 2018, causally related to the accepted August 11, 2016 employment injury. It noted that she had begun working reduced hours on June 22, 2018.

On July 18, 2019 appellant requested reconsideration.

By decision dated September 10, 2019, OWCP denied modification of its October 17, 2018 decision.

Appellant, on July 6, 2020, again requested reconsideration.

By decision dated July 15, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).⁴

OWCP subsequently received medical evidence dated December 10, 2020 through February 3, 2022.

On March 24, 2022 appellant requested reconsideration.

By decision dated June 23, 2022, OWCP denied appellant's request for reconsideration as it was untimely and failed to demonstrate clear evidence of error. It found that she had not submitted factual or medical evidence with her reconsideration request.

⁴ On March 8, 2022 appellant appealed OWCP's July 15, 2020 decision to the Board. In an order dated March 22, 2022, the Board dismissed appellant's appeal as it was not filed within 180 days of the issuance of OWCP's July 15, 2020 decision. *Order Dismissing Appeal, C.S.*, Docket No. 22-0563 (issued March 22, 2022).

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 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

⁵ 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-440 (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. 09-599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

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).

OWCP 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 (for example, proof that a schedule award was miscalculated). 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 determined that appellant's request for reconsideration was untimely filed.

The last OWCP merit decision was dated September 10, 2019. As appellant's request for reconsideration was not received by OWCP until March 24, 2022, more than one year after September 10, 2019, pursuant to 20 C.F.R. § 10.607(a), the request for reconsideration was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in denying the claim.¹⁶

The Board further finds that OWCP summarily denied appellant's request for reconsideration without complying with the review requirement of FECA and its implementing regulations.¹⁷ Section 8124(a) of FECA provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation.¹⁸ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings and facts and a statement of reasons.¹⁹ As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.²⁰

OWCP, in its June 23, 2022 decision, did not mention or address any of the medical evidence it received dated December 10, 2020 through February 3, 2022 subsequent to its last decision dated July 15, 2020 denying appellant's request for reconsideration under section 8128(a). It failed to analyze this evidence to determine whether it was sufficient to demonstrate

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).

¹⁶ 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).

¹⁷ *See Order Remanding Case, W.D.*, Docket No. 20-0859 (issued November 20, 2020); *Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *Order Remanding Case, T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607(b).

¹⁸ 5 U.S.C. § 8124(a).

¹⁹ 20 C.F.R. § 10.126.

²⁰ Federal (FECA) Procedure Manual Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

clear evidence of error. The Board finds that OWCP failed to properly explain the findings with respect to the issue presented so that appellant could understand the basis for the decision, *i.e.*, whether she had demonstrated clear evidence that OWCP's last merit decision was incorrect.²¹

The case must, therefore, be remanded for findings of fact and a statement of reasons, to be followed by an appropriate decision on appellant's untimely reconsideration request.

CONCLUSION

The Board finds that appellant's request for reconsideration was untimely filed. The Board further finds that the case is not in posture for decision regarding whether appellant has demonstrated clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the June 23, 2022 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 26, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²¹ *T.T.*, Docket No. 21-1278 (issued March 29, 2022); *M.G.*, Docket No. 21-0893 (issued December 27, 2021); *R.C.*, Docket No. 21-0466 (issued February 16, 2022).