

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

_____)	
T.G., Appellant)	
)	
and)	Docket No. 22-0352
)	Issued: September 29, 2022
DEPARTMENT OF DEFENSE, DEFENSE)	
INFORMATION SYSTEMS AGENCY,)	
SCOTT AIR FORCE BASE, IL, Employer)	
)	
_____)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 9, 2022 appellant filed a timely appeal from a December 16, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated October 3, 2018, 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 16, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record 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, finding that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

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

On April 9, 2015 appellant, then a 53-year-old financial management technician, filed an occupational disease claim (Form CA-2) alleging depression, anxiety, irritable bowel syndrome, spastic ataxia, back pain, leg fatigue/weakness, and vertigo, due to factors of her federal employment. She noted that she first became aware of her claimed conditions on January 1, 2013 and realized their relation to her federal employment on February 15, 2014. Appellant stopped work on March 12, 2015, and returned to work at her previous employment on April 7, 2015 with no change in her duties/assignments.

In a June 25, 2015 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On August 18, 2015 OWCP received an undated 28-page statement in which appellant indicated that she sustained employment-related stress beginning on March 3, 2009 when she started working under a new immediate supervisor in the financial section work unit. Appellant asserted that, since that time, her supervisor unfairly harassed her regarding various work matters, including criticizing the wording she used in work documents, without providing her adequate training or guidance on how to carry out her work assignments. She claimed that her supervisor scrutinized her work more closely than that of other employees and that she issued her improper performance appraisal ratings beginning in 2009. Appellant asserted that on March 4, 2009 another supervisor committed harassment by yelling at her in the presence of other employees. She further asserted that in October 2011 management improperly failed to consider her for promotion. Appellant described several instances in February and March 2012 when she believed that a coworker unfairly criticized her work product, including her choice of the wording of e-mail communications. She alleged that on October 12, 2012 her supervisor made untrue statements about her work performance in connection with a work appraisal rating and improperly denied her request on that date to leave the office and take sick leave.

Appellant further alleged that on October 31, 2013 her supervisor gave her unwarranted feedback regarding a performance appraisal rating and told her no one wanted to promote her. She asserted that on November 13, 2013 she became emotional when her supervisor discussed the fact that documents faxed from her physician had been misdelivered. Appellant claimed that on March 7, 2014 her supervisor unreasonably told her that she should not spend time on training despite the fact that she felt it was necessary for her job. She indicated that on March 8, 2014 her supervisor advised her that she could not take any leave until she built up leave again. Appellant

³ Docket No. 16-1690 (issued September 7, 2017); Docket No. 20-0329 (issued October 19, 2020).

claimed that she was the only person who was monitored by this supervisor for leave usage. She claimed that on July 2, 2014 her supervisor unfairly criticized her by advising her that a coworker had complained that she “didn’t know what [she] was doing” with respect to a work matter. Appellant further asserted that on September 4, 2014 another supervisor laughed at her when she mentioned taking sick leave in a manner, which suggested she believed that she was “faking” her need to take sick leave. She alleged that on October 29, 2014 her supervisor wrongly accused her of slamming a door on an earlier occasion.

Appellant also submitted numerous reports from healthcare providers. In a September 3, 2014 report, Dr. Pandurang Kiini, a Board-certified psychiatrist, provided an impression of “anxiety type of symptoms.” In an April 15, 2015 report, Byron Loy, a licensed clinical professional counselor, noted that appellant reported experiencing anxiety due to a supervisor who was a “bully and a micro manager.” On October 8, 2015 Dr. Steven D. Pritchett, a Board-certified family medicine physician, indicated that appellant reported experiencing stress from work and was being treated by a psychiatrist for depression, anxiety, and panic disorder.

In a February 16, 2016 development letter, OWCP again requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant subsequently submitted several witness statements from early-2016 in which coworkers discussed their observations about her interactions with supervisors and other employees. She also submitted documents concerning an Equal Employment Opportunity (EEO) claim she filed with respect to some of her claimed employment factors. The documents included a copy of an unsigned “EEO 4 Settlement Agreement.” Appellant also submitted additional medical evidence, including an August 24, 2015 report from Dr. Jeffrey S. Chalfant, an osteopath Board-certified in psychiatry.

By decision dated March 22, 2016, OWCP denied appellant’s claim, finding that she failed to establish a compensable employment factor. It determined that she failed to submit sufficient supporting evidence to establish her claims that management committed error or abuse with respect to administrative matters or that supervisors or coworkers subjected her to harassment or discrimination. OWCP discussed most of the alleged claimed employment factors commencing in November 2013, which appellant detailed in her 28-page statement, but did not discuss those alleged to have occurred between March 2009 and October 2013.

On April 19, 2016 appellant requested reconsideration of the March 22, 2016 decision. In support thereof, she submitted a 25-page document in which she further discussed the various incidents and conditions at work, which she believed caused the claimed stress-related conditions. In an April 29, 2016 statement, a coworker discussed appellant’s interactions with supervisors. Appellant also submitted additional treatment reports, including a June 17, 2016 report from Carol A. Sterling, a licensed clinical professional counselor.

By decision dated July 18, 2016, OWCP denied appellant’s request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By decision dated September 7, 2017,⁴ the Board set aside OWCP's March 22, 2016 decision, finding that OWCP failed to adequately address a substantial portion of appellant's claimed employment factors, *i.e.*, the numerous factors alleged between March 2009 and October 2013, and to make adequate findings of fact regarding those allegations. The Board remanded the case to OWCP for further development of the evidence regarding appellant's stress-related occupational disease claim.

On remand, OWCP further evaluated the factual aspect of appellant's occupational disease claim in its totality. In February 2018 it solicited and received additional comments and documentation from the employing establishment regarding appellant's claimed employment factors.

By decision dated March 21, 2018, OWCP again denied appellant's claim, finding that she had not established a compensable employment factor.

On April 25, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. She subsequently submitted additional evidence in support of her claim, including witness statements of current and former coworkers/supervisors, copies of performance appraisals, and additional reports from healthcare providers. Appellant also submitted an employing establishment mishap report, completed on April 11, 2013, which indicated that she was at work on April 3, 2013 when she reported that she was not feeling well and emergency medical technicians were dispatched.

By decision dated October 3, 2018, OWCP's hearing representative affirmed the March 21, 2018 decision.

On September 19, 2019 appellant requested reconsideration of her claim.

In support of her reconsideration request, appellant submitted a January 30, 2019 report from Dr. Salma Mannan-Hilaly, a Board-certified family medicine physician, who noted that, since 2009 through the date of her report, appellant had been diagnosed with major depression, generalized anxiety disorder, propriospinal myoclonus disorder, acid reflux, esophageal reflux, gastrointestinal bleeding, post-traumatic stress disorder, spastic ataxia, small bowel ulcers, nausea, panic disorder, fatigue, somatization disorder, and cervical myelopathy. Dr. Mannan-Hilaly opined that these conditions had been "caused from emotional distress and harassment, due to [appellant's] work environment" from 2009 through 2015 and that her supervisor was the major cause for "her physical and mental health concerns." In a September 6, 2019 report, she advised that appellant was diagnosed with anxiety disorder in 2006 and 2007 and was placed on medication due to distress. Dr. Mannan-Hilaly indicated that appellant was gradually taken off medication during 2008 as she did not need it at that time. She noted that, from 2009 through 2015, appellant was again placed on medication for anxiety disorder and major depression due to her supervisor who "caused her sickness and depression due to the hostile work environment."

In a June 20, 2019 report, Dr. Scott Norris, a Board-certified neurologist, noted that he first treated appellant on May 18, 2016 for atypical myoclonus, abnormal movements, and atypical gait pattern, and that he last saw her on June 5, 2019. He diagnosed functional myoclonus, tremor, and

⁴ Docket No. 16-1690 (issued September 7, 2017).

gait (greatly exacerbated by stress), and noted she also had cervical myelopathy secondary to cervical stenosis. Dr. Norris advised that appellant had asked him to write a letter “in consideration that a self-related history of verbal abuse in the work setting (she specifically indicated that a former supervisor bullied and belittled her) greatly exacerbated her atypical movement disorder.” He reported that it was generally true that psychological stressors exacerbated symptoms of functional movement disorder and that appellant reported improved functional movement in connection with stress reduction since stopping work.

In a March 1, 2019 report, Ms. Sterling indicated that she had ruled out previous diagnoses of anxiety disorder and acute distress disorder, and noted that she concurred with an attending physician’s diagnosis of post-traumatic stress disorder. She indicated that appellant reported experiencing systemic exclusion and hostile communications from her supervisor, resulting in repeated exposure to demeaning interactions. Ms. Sterling opined that the “psychological atmosphere in the workplace had a profoundly negative effect on appellant’s psychic safety and personal worth.”

By decision dated November 7, 2019, OWCP denied appellant’s request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board and, by decision dated October 19, 2020,⁵ the Board affirmed the November 7, 2019 decision.⁶

On December 13, 2021 appellant requested reconsideration of her claim and asserted that the evidence she was submitting validated her claim that management subjected her to personal attacks.

In support of her reconsideration request, appellant submitted a December 16, 2020 report from Dr. Chalfant who indicated that he had treated appellant since July 28, 2014. Dr. Chalfant noted that appellant had been diagnosed with major depressive disorder, anxiety disorder, post-traumatic stress disorder, and irritable bowel syndrome. He advised that in 2014 appellant reported worsening symptoms that she believed were secondary to stress caused by her supervisor. Dr. Chalfant indicated that appellant reported daily harassment and mental abuse at work and that her symptoms seemed to decrease when she was not “around work.”

In a January 25, 2021 report, Dr. Mannan-Hilaly opined that appellant’s health conditions were brought on by constant daily stressors from management at work, which included harassment and mental abuse. She advised that appellant was diagnosed with major depressive disorder, major anxiety, tremors, and post-traumatic stress disorder. Dr. Mannan-Hilaly noted that these conditions had been ongoing since 2009 and continued until appellant retired in 2015. She indicated that appellant’s health conditions had improved since she retired.

Appellant resubmitted copies of the January 30 and September 6, 2019 reports of Dr. Mannan-Hilaly, the June 20, 2019 report of Dr. Norris, and the March 1, 2019 report of

⁵ Docket No. 20-0329 (issued October 19, 2020).

⁶ Appellant again appealed to the Board and, by order dated October 29, 2021, the Board dismissed the appeal as there was no final adverse decision issued by OWCP over which it could exercise jurisdiction.

Ms. Sterling. She also resubmitted a copy of an employing establishment mishap report, which had been completed on April 11, 2013.

By decision dated December 16, 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.⁷ 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.⁸ Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS).⁹ Imposition of this one-year filing limitation does not constitute an abuse of discretion.¹⁰

OWCP may not deny a request for reconsideration solely because it was untimely filed. When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error.¹¹ If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review.¹²

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹³ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.¹⁴ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹⁵ 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 request for reconsideration bears on the evidence previously of record and

⁷ 5 U.S.C. § 8128(a); *see also* *A.B.*, Docket No. 19-1539 (issued January 27, 2020); *W.C.*, 59 ECAB 372 (2008).

⁸ 20 C.F.R. § 10.607(a).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

¹⁰ *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).

¹¹ *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).

¹² *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).

¹³ *A.A.*, Docket No. 19-1219 (issued December 10, 2019); *J.F.*, Docket No. 18-1802 (issued May 20, 2019); *J.D.*, Docket No. 16-1767 (issued January 12, 2017); *Dean D. Beets*, 43 ECAB 1153 (1992).

¹⁴ *J.D.*, Docket No. 19-1836 (issued April 6, 2020); *Leone N. Travis*, 43 ECAB 227 (1999).

¹⁵ *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

whether the new evidence demonstrates clear error on the part of OWCP.¹⁶ 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.¹⁷

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁸ The claimant must present evidence which on its face shows that OWCP made an error.¹⁹ 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.²⁰ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.²¹

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.

A request for reconsideration must be received within one year of the date of the last merit decision for which review is sought.²² As appellant's request for reconsideration was not received by OWCP until December 13, 2021, more than one year after OWCP's issuance of its October 3, 2018 merit decision, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in its October 3, 2018 decision.

The Board further finds that appellant has not demonstrated clear evidence of error.

After OWCP's issuance of its October 3, 2018 merit decision, appellant submitted medical evidence, including January 25 and 30, and September 6, 2019 reports from Dr. Mannan-Hilaly, a June 20, 2019 report from Dr. Norris, and a December 16, 2020 report from Dr. Chalfant. She also submitted a March 1, 2019 report from Ms. Sterling, a licensed clinical professional counselor. In these reports, the healthcare providers discussed appellant's self-reported problems at work and diagnosed various physical and emotional conditions. This evidence, however, does not demonstrate clear evidence of error in OWCP's October 3, 2018 decision because it does not directly address the underlying issue of the present case, which is factual in nature, *i.e.*, whether appellant submitted sufficient factual evidence, with adequate supporting documentation, to establish a compensable employment factor.

¹⁶ *T.N.*, Docket No. 18-1613 (issued April 29, 2020).

¹⁷ *J.M.*, Docket No. 19-1842 (issued April 23, 2020).

¹⁸ *See supra* note 9 at Chapter 2.1602.5a (September 2020); *see also J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹⁹ *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

²⁰ *Id.*

²¹ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

²² *See supra* note 8.

On reconsideration, appellant generally argued that the submitted evidence validated her claim that management subjected her to improper personal attacks. However, this assertion, unsupported by adequate factual evidence, does not demonstrate clear evidence of error by OWCP in its October 3, 2018 decision. Appellant also submitted an employing establishment mishap report, completed on April 11, 2013, which indicated that she was at work on April 3, 2013 when she reported she was not feeling well and emergency medical technicians were dispatched to attend to her health needs. This record of medical treatment also does not demonstrate clear evidence of error by OWCP in its October 3, 2018 decision.

As noted, clear evidence of error is intended to represent a difficult standard.²³ 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.²⁴

The Board finds that the evidence submitted by appellant does not demonstrate on its face that OWCP committed error when it denied appellant's occupational disease claim in its October 3, 2018 decision.²⁵ Therefore, OWCP properly denied appellant's untimely request for reconsideration.

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.

²³ See *supra* note 18.

²⁴ See *supra* notes 14 and 19; see also *M.E.*, Docket No. 18-1442 (issued April 22, 2019).

²⁵ See *S.F.*, Docket No. 09-0270 (issued August 26, 2009).

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 29, 2022
Washington, DC

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

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

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