

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

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S.P., Appellant)	
)	
and)	Docket No. 22-1070
)	Issued: December 7, 2023
U.S. POSTAL SERVICE, MAIN OFFICE)	
LITTLE ROCK POST OFFICE, Little Rock, AR,)	
Employer)	
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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 June 10, 2022 appellant filed a timely appeal from a December 16, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from the last merit decision on this issue, dated August 1, 2019, to the filing of this appeal,

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from December 16, 2021, the date of OWCP's nonmerit decision, was June 14, 2022. Because using July 5, 2022, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is June 10, 2022, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.³

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

On July 20, 2017 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 5, 2017 he sustained right knee and left ankle sprains when he jumped off a porch to avoid a dog attack while in the performance of duty. OWCP initially accepted the claim for a medial meniscus tear and an anterior cruciate ligament (ACL) tear of the right knee, later expanding the acceptance of appellant's claim to include sprain of the right knee and cruciate ligament.

In a duty status report (Form CA-17) dated October 31, 2018, Dr. Tommy Love, an internist, recommended work restrictions of lifting no more than 25 pounds for up to four hours intermittently; standing and walking for no more than two hours daily intermittently; no climbing or kneeling; bending/stooping for no more than one hour per day intermittently; twisting for no more than six hours per day intermittently; pulling/pushing for no more than one hour per day intermittently; simple grasping for no more than six hours per day intermittently; reaching above the shoulder for no more than two hours per day intermittently; and driving a vehicle for no more than one hour per day intermittently.

On November 5, 2018 the employing establishment offered appellant a limited-duty job as a modified city carrier. The duties of the modified position involved carrying his route for up to eight hours per day. The physical requirements of the modified assignment included: lifting/carrying up to 25 pounds for up to four hours intermittently; no climbing or kneeling; walking up to two hours per day intermittently; and driving a vehicle for up to an hour per day. Appellant's work restrictions were summarized as including: limited lifting and carrying of up to 25 pounds for up to six hours per day intermittently; no climbing or kneeling; walking up to two hours per day intermittently; and driving a vehicle for up to an hour per day intermittently. The offer also indicated that all of appellant's medical restrictions would be accommodated.

On November 26, 2018 OWCP advised appellant that it found the November 5, 2018 job offer was suitable work within the work limitations provided by Dr. Love. It afforded him 30 days

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the December 16, 2021 decision, OWCP received additional evidence. Appellant also submitted additional evidence on appeal. 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.*

to accept the offered position or to provide valid reasons for refusal. Appellant did not respond to OWCP's advisory letter or accept the offered position within 30 days.

By decision dated March 6, 2019, OWCP terminated appellant's wage-loss compensation and entitlement to schedule award benefits, effective March 7, 2019, pursuant to 5 U.S.C. § 8106(c)(2), as he refused an offer of suitable work. It found that the job offer was suitable based upon his current work restrictions as provided by Dr. Love on October 31, 2018.

On March 29, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on June 24, 2019. No additional evidence was received.

By decision dated August 1, 2019, OWCP's hearing representative affirmed OWCP's March 6, 2019 decision.

On January 12, 2021 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On January 12, 2021 OWCP denied appellant's schedule award claim, noting that his entitlement to compensation for wage-loss and schedule award benefits was terminated on March 7, 2019 due to his refusal of suitable work, pursuant to 5 U.S.C. § 8106(c)(2).

On April 30, 2021 appellant requested reconsideration of OWCP's August 1, 2019 termination decision. In a statement dated April 14, 2021, he requested reinstatement of his compensation for wage-loss and schedule award benefits, acknowledging that his reconsideration request was untimely. Appellant stated that he had retired from the employing establishment in June 2019 due to disability caused by the work-related injury. He noted that he had accepted the job offer verbally. In an additional statement dated May 3, 2021, appellant noted that he was unable to go to the employing establishment to accept the job offer in writing as a result of his work-related injury.

By decision dated July 28, 2021, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On August 16, 2021 appellant again requested appellant's reconsideration of OWCP's August 1, 2019 decision. He submitted prior unsigned job offers from February 20 through October 26, 2018. Appellant resubmitted a rehabilitation closure report dated March 28, 2019 and resubmitted rehabilitation progress reports dated from December 19, 2018 through February 20, 2019. He also resubmitted correspondence with the employing establishment and OWCP, as well as resubmitting a statement dated March 26, 2019.

By decision dated September 29, 2021, OWCP denied appellant's request for reconsideration, finding that the reconsideration requests was untimely filed and failed to demonstrate clear evidence of error. It further noted that as well as not returning a signed and accepted modified job offer, he had not reported for work.

In a statement dated September 23, 2021, a union steward stated that appellant had accepted all modified job offers from the employing establishment, by telephone communication.

On December 9, 2021 appellant again requested reconsideration.

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

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right.⁴ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁵ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁶

OWCP procedures require a review of the record to determine whether the application for reconsideration was received within one year of a merit decision. The one-year period begins on the date of the original decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board, and any merit decision following action by the Board, but does not include prerecouplement hearing decisions.⁷ Timeliness is determined by the document receipt date of the reconsideration request, *i.e.*, the received date in the Integrated Federal Employees' Compensation System (iFECS). If the request for reconsideration has a document received date greater than one year, the request must be considered untimely.⁸

OWCP will consider an untimely request for reconsideration only if it demonstrates clear evidence of error on the part of it in its most recent merit decision. The request must establish, on its face, that such decision was erroneous.⁹ The term clear evidence of error is intended to represent a difficult standard. If clear evidence of error has not been presented, OWCP should deny the request by letter decision, which includes a brief evaluation of the evidence submitted and a finding made that clear evidence of error has not been shown.¹⁰

⁴ This section provides in pertinent part: “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his] own motion or on application.” 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.607.

⁶ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

⁷ *Id.* at Chapter 2.1602.4a. (September 2020).

⁸ *Id.* at Chapter 2.1602.4b (September 2020); *see also S.J.*, Docket No. 19-1864 (issued August 12, 2020); *W.A.*, Docket No. 17-0225 (issued May 16, 2017).

⁹ *W.A., id.*; *D.O.*, Docket No. 08-1057 (issued June 23, 2009); *Robert F. Stone*, 57 ECAB 292 (2005).

¹⁰ *Supra* note 6 at Chapter 2.1602.5a (September 2020).

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, as it was untimely filed and failed to demonstrate clear evidence of error.¹¹

OWCP's regulations establish a one-year time limit for requesting reconsideration, which begins on the date of the original merit decision. The most recent merit decision on this issue was the August 1, 2019 decision from OWCP's Branch of Hearings and Review, affirming OWCP's March 6, 2019 decision. As OWCP received appellant's request for reconsideration on December 9, 2021, more than one year after the August 1, 2019 merit decision, the Board finds that the request was untimely filed.¹²

The Board further finds that appellant has not demonstrated clear evidence of error. The underlying issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and entitlement to schedule award benefits, effective March 7, 2019, for refusing an offer of suitable work pursuant to 5 U.S.C. § 8106(c)(2). On reconsideration, appellant submitted a September 23, 2021 statement from a union steward, contending that appellant had accepted all modified job offers from the employing establishment.

The term clear evidence of error is intended to represent a difficult standard. The Board finds that the evidence submitted on reconsideration does not show that OWCP committed error in its August 1, 2019 decision. There is no evidence that appellant accepted the November 5, 2018 modified job offer, prior to the termination of his compensation benefits. Appellant has not otherwise submitted evidence sufficient to raise a substantial question as to the correctness of OWCP's August 1, 2019 decision.

Accordingly, 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.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

¹¹ *D.B.*, Docket No. 19-0648 (issued October 21, 2020); *R.T.*, Docket No. 20-0298 (issued August 6, 2020).

¹² *Id.*

ORDER

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

Issued: December 7, 2023
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