

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

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Y.J., Appellant)	
)	
and)	Docket No. 23-0797
)	Issued: December 5, 2023
U.S. POSTAL SERVICE, OAKLAND MAIN)	
POST OFFICE, Oakland, CA, 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 May 12, 2023 appellant filed a timely appeal from a February 21, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated July 20, 2001, 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

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 4, 1981 appellant, then a 22-year-old letter sorting machine operator, filed a traumatic injury claim (Form CA-1) alleging that she sustained injury to her neck when she lifted a sack while in the performance of duty. She stopped work on August 5, 1981. OWCP accepted the claim for cervical strain and discopathy at C4-5 and C5-6.

On April 10, 2000 appellant returned to light-duty work for four hours per day. In a decision dated July 6, 2000, OWCP determined that her reemployment as a modified distribution clerk with the employing establishment effective April 10, 2000, fairly and reasonably represented her wage-earning capacity.

On June 19, 2001 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

In response, appellant submitted additional medical evidence.

In a July 20, 2001 decision, OWCP terminated appellant's compensation benefits effective August 11, 2001.

On October 1, 2001, and January 11 and May 15, 2002 appellant requested reconsideration and submitted additional evidence. By decisions dated November 9, 2001, and April 8 and September 23, 2002 respectively, OWCP denied her requests for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

Appellant again requested reconsideration on February 12, 2003, and submitted additional medical evidence. By decision dated March 18, 2003, OWCP denied her request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On August 4, 2003 appellant appealed to the Board. By decision dated March 2, 2004, the Board affirmed OWCP's September 23, 2002 and March 18, 2003 decisions.³

On October 26, 2004, December 1, 2006, and October 22, 2007 appellant again requested reconsideration and submitted additional evidence. By decisions dated January 13, 2005, January 22, 2007, and January 17, 2008, OWCP denied her reconsideration requests, finding that they were untimely filed, and failed to demonstrate clear evidence of error.

On July 26 and October 31, 2022 appellant again requested reconsideration and submitted additional evidence. She argued that she had a work injury from lifting a sack of mail on July 22,

² Docket No. 03-1961 (issued March 2, 2004).

³ *Id.*

1981 that degenerated over the years causing osteoarthritis in her neck, and she had experienced continual neck and back pain.

In letters dated June 11 and September 6, 2021 and July 15 and August 26, 2022, appellant argued that her claim should not have been closed, requested that it be reopened, and alleged that her neck injury caused her to develop significant osteoarthritis in her neck with chronic pain for the rest of her life.

In letters dated November 16 and December 23, 2022, appellant requested that medical treatment be authorized, and that her claim be reopened.

OWCP received a copy of a previously-submitted report from Dr. James Edward Eichel, a Board-certified family medicine physician, dated October 24, 2010, who opined that appellant was totally disabled.

OWCP also received a report dated July 14, 2022, wherein Dr. Eichel noted that appellant had been under his care since 1997. He related that on July 22, 1981 while lifting a sack of mail at the employing establishment, appellant sustained an acute neck injury, which had disabled her ever since. Dr. Eichel explained that, by the time appellant presented to him in 1997, she had significant osteoarthritis in her neck, and chronic pain which severely limited the range of motion (ROM) of her neck. He related that she attempted to return to work in 2005, and underwent a functional capacity evaluation (FCE) on June 21, 2005 during which the grip and functional strength of her left hand and wrist were tested, and she needed the technician to assist her to do the test. Dr. Eichel went on to say that appellant was able to do the test with her right hand unassisted, and she developed severe pain in her left wrist from the FCE, which prompted a physician consultation the next day and was later diagnosed as a torn fibrocartilage complex in her left wrist. He further noted that she sustained tendinitis in her finger flexors from the FCE, and developed intermittent triggering of her fingers of both hands (right compensating for pain in left), all of which had worsened her disability. Dr. Eichel found that appellant continued to have very limited ROM of her neck, and chronic pain in her neck and left hand and wrist which make her unable to lift and carry objects weighing more than 2 pounds, use a keyboard, or sit or stand for more than 30 minutes. He noted that appellant's treatments included stretching, physical therapy exercises, bracing as needed for her neck and left hand and wrist, and prescription medicines for chronic pain. Dr. Eichel opined that she would likely need to continue these treatments for the rest of her life, and that he did not expect her disabling conditions to improve. He further opined that appellant was permanent and stationary with regard to these conditions, and would permanently need accommodations to accomplish any tasks, including her activities of daily living.

Appellant also submitted an August 18, 2017 magnetic resonance imaging (MRI) scan of the left wrist, a copy of the December 20, 2000 and January 11, 2001 supplemental reports from the second opinion physician, Dr. Thomas D. Schmitz, a Board-certified orthopedic surgeon, and the May 18, 2001 report from the impartial medical examiner, Dr. John Batcheller, a Board-certified orthopedic surgeon.

By decision dated February 21, 2023, OWCP denied appellant's October 31 2022 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.⁴ To be entitled to a merit review of an OWCP decision, a request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ 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).⁶ The Board has found that the imposition of this one-year filing limitation does not constitute an abuse of discretion.⁷

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 that OWCP's most recent merit decision was in error.⁸ 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 demonstrates clear evidence of error on the part of OWCP.⁹ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹⁰

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.¹¹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹² 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 evidence of error on the

⁴ *Id.* at § 8128(a); *see M.M.*, Docket No. 21-1203 (issued December 22, 2022); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁵ 20 C.F.R. § 10.607(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁷ *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).

⁸ *See* 20 C.F.R. § 10.607(b); *R.S.*, Docket No. 19-0180 (issued December 5, 2019); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁹ *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; *supra* note 6 at Chapter 2.1602.5a (September 2020).

¹⁰ *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).

¹¹ 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).

¹² *See G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

part of OWCP.¹³ The Board makes an independent determination of 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.¹⁴

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁵ The claimant must present evidence, which on its face shows that OWCP made an error.¹⁶ 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.¹⁷

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.

As noted above, a request for reconsideration must be received within one year of the date of the last merit decision for which review is sought.¹⁸ As appellant's request for reconsideration was not received by OWCP until October 31, 2022, more than one year after issuance of the July 20, 2001 merit decision, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in its February 21, 2023 nonmerit decision.

In her letter dated October 25, 2022, appellant argued that her July 22, 1981 work injury degenerated over the years causing osteoarthritis in her neck. In multiple letters, she argued that her claim should not have been closed because her work injury caused her to develop osteoarthritis in her neck and chronic pain. The underlying issue is whether OWCP's termination of appellant's benefits on July 20, 2021 was proper, because she no longer had continuing disability and residuals causally related to the accepted injury. This is a medical issue, and her arguments do not constitute medical evidence. Appellant's continued arguments that her accepted conditions did not resolve by July 20, 2021 do not manifest on their face that OWCP committed an error in terminating her compensation benefits on July 20, 2021.¹⁹

¹³ *Id.*

¹⁴ *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

¹⁵ *Supra* note 6 at Chapter 2.1602.5a (September 2020); *see also J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹⁶ *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

¹⁷ *Id.*

¹⁸ *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, *supra* note 10; *see supra* note 6 at Chapter 2.1602.5a (September 2020); *see also J.S.*, *supra* note 15.

¹⁹ *See L.T.*, Docket No. 21-0844 (issued April 21, 2023); *L.B.*, Docket No. 19-0635 (issued August 23, 2019); *V.G.*, Docket No. 19-0038 (issued June 18, 2019); *C.V.*, Docket No. 18-0751 (issued February 22, 2019); *Leon J. Modrowski*, 55 ECAB 196 (2004); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

In support of her request for reconsideration, appellant submitted a July 14, 2022 report from Dr. Eichel. Dr. Eichel found that she continued to have limited ROM of her neck, chronic pain in her neck, and chronic pain in her left hand and wrist. He further related that appellant underwent an FCE on June 21, 2005, after which she developed severe pain in her left wrist due to a torn fibrocartilage complex, and tendinitis in her finger flexors with intermittent triggering of her fingers of both hands, which had worsened her disability. As Dr. Eichel did not address appellant's previously accepted conditions, his reports do not raise a substantial question as to the correctness of OWCP's merit decision terminating her benefits on July 20, 2001.

Appellant also submitted an August 18, 2017 MRI scan of the left wrist. The Board has held that evidence, which duplicates or repeats evidence already in the case record does not raise a substantial question as to the correctness of OWCP's decision.²⁰

The Board finds that the evidence submitted by appellant in support of her request for reconsideration does not raise a substantial question as to the correctness of the termination of her compensation.²¹ Thus, the Board finds that the evidence submitted on reconsideration is insufficient to demonstrate clear evidence of error on the part of OWCP in its July 20, 2001 decision.²²

As appellant's request for reconsideration was untimely filed, and failed to demonstrate clear evidence of error, the Board finds that OWCP properly denied her 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.

²⁰ See *A.M.*, Docket No. 17-1434 (issued January 2, 2018); see *D.B.*, Docket No. 16-0539 (issued May 26, 2016); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

²¹ See *R.P.*, Docket No. 22-0686 (issued September 30, 2022); *E.K.*, Docket No. 21-1144 (issued February 3, 2022); *S.D.*, Docket No. 17-1450 (issued January 8, 2018); *Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

²² See *W.R.*, Docket No. 18-1042 (issued February 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 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