

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

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C.S., Appellant)

and)

U.S. POSTAL SERVICE, PROCESSING &)
DISTRIBUTION FACILITY, Huntsville, AL,)
Employer)
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Docket No. 22-0142
Issued: October 23, 2023

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On April 23, 2021 appellant filed a timely appeal from a January 15, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated March 18, 2019 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 the case.²

ISSUE

The issue is whether OWCP properly denied appellant's October 20, 2020 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On January 26, 2019 appellant, then a 68-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral carpal tunnel syndrome (CTS) due

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 15, 2021 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 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 factors of his federal employment. He indicated that his job duties for the past 31 plus years involved repetitive use of his hands and wrists to perform mail handling tasks and to lift items weighing up to 70 pounds. Appellant noted that he first became aware of his condition on April 1, 2018 and realized its relation to his federal employment on April 10, 2018. He did not stop work.

In a February 15, 2019 development letter, OWCP informed appellant that it had not received any evidence in support of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate letter of even date, OWCP notified the employing establishment of appellant's traumatic injury claim and requested additional information from a knowledgeable supervisor. It afforded both parties 30 days to submit the necessary evidence. No response was received.

By decision dated March 18, 2019, OWCP denied appellant's claim, finding that the evidence submitted was insufficient to establish an injury in the performance of duty, as alleged. It noted that, as he did not respond to its development questionnaire or submit any evidence in support of his claim, it was unable to determine the factual component of his claim. Therefore, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP thereafter received a narrative report dated May 6, 2019 by Dr. Philip A. Maddox, a Board-certified orthopedic surgeon, who indicated that appellant was last seen on January 7, 2019 for complaints of bilateral hand numbness and reduced grip strength. On physical examination, Dr. Maddox noted a positive Durkan's test and a positive Tinel's sign, which he opined that were consistent with CTS. He recommended that appellant undergo electromyography and nerve conduction velocity studies, and noted that appellant may require surgery. Dr. Maddox opined that there was no conclusive evidence that CTS was caused by or related to any work activity.

On October 20, 2020 appellant requested reconsideration. In support of his request, he submitted a statement dated October 19, 2020 which stated that his job duties included lifting heavy sacks, flat tubs, trays of letters, packages, and parcels; repetitive pushing and pulling containers of mail, and operating industrial power equipment with a heavy tow bar. Appellant related that he believed that these duties caused bilateral CTS, and that he had no other outside hobbies or employment which could have contributed to his condition.

In further support of his request, appellant submitted an October 14, 2020 note by Dr. Jonathan A. Ludwig, a Board-certified orthopedic surgeon, who diagnosed bilateral CTS and bilateral cubital tunnel syndrome and recommended carpal tunnel release and ulnar nerve transposition surgery on the left upper extremity.

By decision dated January 15, 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.³ 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

³ 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

decision for which review is sought.⁴ Timeliness is determined by the document receipt date, *i.e.*, the “received date” in OWCP’s Integrated Federal Employees’ Compensation System (iFECS).⁵ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁶

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.⁷ 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.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.

OWCP’s procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁰ 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.¹¹ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹²

ANALYSIS

The Board finds that OWCP properly determined that appellant’s October 20, 2020 request for reconsideration was untimely filed.

⁴ 20 C.F.R. § 10.607(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (September 2020).

⁶ *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).

⁷ *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).

⁸ *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 5 at Chapter 2.1602.5 (February 2016).

⁹ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 5 at Chapter 2.1602.5(a) (February 2016).

¹⁰ *G.G.*, *supra* note 6; *see also* 20 C.F.R. § 10.607(b); *supra* note 5 at Chapter 2.1602.5 (February 2016).

¹¹ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *id.* at Chapter 2.1602.5(a) (February 2016).

¹² *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

A request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.¹³ As appellant's request for reconsideration was not received until October 20, 2020, more than one year after the issuance of OWCP's March 18, 2019 merit decision, it was untimely filed. Consequently, he must demonstrate clear evidence of error by OWCP in denying the claim.¹⁴

The Board further finds that appellant has not demonstrated clear evidence of error on the part of OWCP in its March 18, 2019 decision. The underlying issue is whether he met his burden of proof to establish an injury in the performance of duty, as alleged.

In support of his untimely request for reconsideration, appellant submitted a statement dated October 19, 2020, which contained additional details regarding his job duties. However, he did not explain how his statement raised a substantial question as to the correctness of OWCP's decision.¹⁵ OWCP also received medical evidence including a May 6, 2019 narrative report by Dr. Maddox, and an October 14, 2020 note by Dr. Ludwig. As previously noted, clear evidence of error is intended to represent a difficult standard.¹⁶ The argument and evidence submitted by appellant in support of his untimely request for reconsideration does not raise a substantial question as to the correctness of the denial of his claim.¹⁷ Thus, the evidence is insufficient to demonstrate clear evidence of error.¹⁸

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

¹³ 20 C.F.R. § 10.607(a).

¹⁴ *Id.* at. § 10.607(b); *see R.T.*, Docket No. 19-0604 (issued September 13, 2019); *see Debra McDavid*, 57 ECAB 149 (2005).

¹⁵ *See G.B.*, Docket No. 18-1629 (issued April 15, 2019); *P.B.*, Docket No. 18-0265 (issued September 5, 2018); *D.E.*, 59 ECAB 438 (2008).

¹⁶ *Supra* note 12.

¹⁷ *See P.T.*, Docket No. 18-0494 (issued July 9, 2018).

¹⁸ *J.C.*, Docket No. 20-1250 (issued May 24, 2021); *W.D.*, Docket No. 19-0062 (issued April 15, 2019).

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 23, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board