

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 January 7, 2021 appellant, then a 42-year-old financial clerk and assistant, filed an occupational disease claim (Form CA-2) alleging that he developed eye fatigue, cataracts, hypertension, anxiety, depression and insomnia due to factors of his federal employment including the use of software at work to track and tabulate telephone calls. He noted that he first became aware of his condition on April 21, 2019 and first realized its relation to his federal employment on February 21, 2020. Appellant did not immediately stop work.

In a form report dated February 20, 2020, Dr. Nathan Pekar, a Board-certified family practitioner, treated appellant from 2013 to the present for severe high blood pressure, anxiety, and legal blindness.

In a form report dated November 17, 2020, Dr. Blythe Monheit, a Board-certified ophthalmologist, performed eye surgery, cataract removal, and goniotomy. She indicated that appellant would be incapacitated from November 9 through December 1, 2020. Dr. Monheit noted appellant's condition was chronic, requiring multiple visits.

In a January 20, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

By decision dated March 2, 2021, OWCP denied appellant's claim, finding that the medical evidence of record did not contain a valid medical diagnosis in connection with the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 23, 2022 appellant requested reconsideration. He advised that he was unaware of mail sent to his home during the COVID-19 pandemic and as a result he did not timely file a request for reconsideration. Appellant noted having glaucoma since birth and he was "blind in [his] right eye and legally blind in [his] left eye." He advised that he was forced to use software at work that was not accommodating to his visual disability and caused severe fatigue resulting in eye surgery. Appellant also asserted that he was harassed by his manager about his work performance, he developed a urologic condition, and was transferred to a new section that affected his career progression. He indicated that he resigned from the employing establishment in March 2022 because he was not able to handle the physical stress and demands of the position.

In support of reconsideration, appellant submitted additional evidence, including progress reports which noted that Dr. Monheit treated him from September 29, 2016 through May 3, 2022 for congenital glaucoma. In an operative report dated November 9, 2020, Dr. Monheit performed

a bleb revision, goniotomy of the left eye, and phacoemulsification with lens placement. She diagnosed open-angle glaucoma, left eye; trabeculectomy, left eye; visually-significant posterior subcapsular cataract, left eye; and nystagmus in both eyes.

Dr. Pekar continued to treat appellant from February 21, 2020 through September 6, 2022 for essential hypertension, glaucoma, anxiety, and legal blindness.

On February 21, 2020 Dr. Roy Mullins, a chiropractor, treated appellant for segmental and somatic dysfunction of the lumbar, sacral, and pelvic region.

Dr. Eileen Bowden, a Board-certified ophthalmologist, treated appellant on June 7 and August 9, 2022 for congenital glaucoma, pseudophakia of the left eye, and absolute glaucoma of the right eye.

By decision dated September 29, 2022, OWCP denied appellant's 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.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 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 In this

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).

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. 18-1074 (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, 501-02 (1990).

⁸ *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(b); *supra* note 5 at Chapter 2.1602.5 (September 2020).

regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.⁹

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹⁰ 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. The Board makes an independent determination as to whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹¹

The term clear evidence of error is intended to represent a difficult standard.¹² The claimant must present evidence which on its face shows that OWCP made an error.¹³ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁴

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.

Appellant had one year from OWCP's March 2, 2021 merit decision to request reconsideration. As OWCP received his request for reconsideration on September 23, 2022, more than one year after the March 2, 2021 decision, the Board finds that it was untimely filed.¹⁵ Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in its March 2, 2021 decision.¹⁶

In support of his reconsideration, appellant submitted progress reports from Dr. Monheit, who treated him from September 29, 2016 through May 3, 2022 for congenital glaucoma and performed eye surgery on November 9, 2020. Dr. Monheit diagnosed open-angle glaucoma, left

⁹ *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).

¹⁰ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 5 at Chapter 2.1602.5(a) (September 2020).

¹¹ *U.C.*, Docket No. 19-1753 (issued June 10, 2020).

¹² *See supra* note 5 at Chapter 2.1602.5(a) (September 2020); *see also J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹³ *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

¹⁴ *D.S.*, Docket No. 17-0417 (issued May 24, 2017).

¹⁵ *Supra* notes 4 and 5. *See also D.B.*, Docket No. 19-0648 (issued October 21, 2020); *R.T.*, Docket No. 20-0298 (issued August 6, 2020).

¹⁶ *Id.*

eye; trabeculectomy, left eye; visually significant posterior subcapsular cataract, left eye; and nystagmus in both eyes. Dr. Pekar treated appellant from April 6, 2020 through September 6, 2022 for essential hypertension, glaucoma, anxiety, and legal blindness. Similarly, Dr. Mullins treated appellant on February 21, 2020 for segmental and somatic dysfunction of the lumbar, sacral, and pelvic region. Likewise, Dr. Bowden treated appellant on June 7 and August 9, 2022 for congenital glaucoma, pseudophakia of the left eye, and absolute glaucoma of the right eye. However, as explained above, 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.¹⁷ The Board finds that appellant's request for reconsideration did not show on its face that OWCP committed an error in denying his occupational disease claim.¹⁸ Thus, the evidence is insufficient to demonstrate clear evidence of error.¹⁹

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, finding that it was untimely filed and failed to demonstrate clear evidence of error.

¹⁷ *Supra* note 11.

¹⁸ *S.C.*, Docket No. 19-1424 (issued September 15, 2020); *U.C.*, *supra* note 11.

¹⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 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