

employment, including working over 60 hours weekly with little help. She noted that she first became aware of her condition and realized its relationship to her federal employment on August 30, 2016.

By decision dated April 5, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the employment factors occurred as described. It noted that she had not provided specific dates and duration of the occurrence of the reported work-related events. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 2, 2017 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on October 3, 2017.

By decision dated November 7, 2017, OWCP's hearing representative modified the April 5, 2017 decision to find that appellant often worked after 4:45 p.m. and worked on some Saturdays; however, the claim remained denied as it was not established that these instances caused appellant to work over 40 hours in a week. The remainder of the alleged incidents were found not to have occurred.

On January 22, 2019 appellant requested reconsideration.

By decision dated April 16, 2019, OWCP denied modification of the November 7, 2017 decision. It found that appellant had not submitted sufficient evidence to establish that the employment factors occurred as alleged. Specifically, OWCP found that appellant had not shown that there were any work incidents within the performance of duty.

On March 17, 2020 appellant again requested reconsideration.

By decision dated June 15, 2020, OWCP denied modification of the April 16, 2019 decision.

On August 11, 2020 appellant again requested reconsideration.

By decision dated October 29, 2020, OWCP denied modification of the June 15, 2020 decision.

On July 22, 2021 appellant again requested reconsideration.

By decision dated October 20, 2021, OWCP denied modification of the October 29, 2020 decision.

On October 21, 2022 appellant again requested reconsideration.

In support thereof, OWCP received appellant's candidate overview for the position of customer service supervisor. Appellant also submitted a plethora of posts from an online chat forum. The chats discussed issues at various employing establishment facilities. Appellant also submitted a settlement agreement dated June 4, 2009 pertaining to grievant D.E.; an e-mail dated January 21, 2015 regarding daily work requirements; a calendar bearing no identification from

2016 indicating hours worked; an employing establishment letter dated February 21, 2017 noting that appellant would be allowed to use leave to cover an absence; a document dated June 2, 2017 from T.C. documenting that a rural carrier had remarked that appellant would leave in the afternoon and not come back before 5:30; an August 15, 2017 letter; a supervisor's statement regarding appellant's disability retirement dated July 21, 2017; a statement from T.M. dated August 7, 2017 regarding an interaction with appellant and her sister on that day; a statement from appellant dated August 9, 2017 regarding her attempts to collect her personal belongings from July 22 to August 7, 2017; an e-mail dated August 17, 2017 noting an incident involving appellant's sister; a letter dated September 16, 2017 from L.H. dealing with her own personnel matters and noting that appellant worked almost every Saturday between June 11 and August 9, 2016; a letter from appellant to T.C. dated April 24, 2018 discussing personnel matters; an undated letter from D.E. concerning reduction of clerk hours at the employing establishment, noting that the postmaster had donated three hours of work time on October 4 and on October 6 had assisted a rural carrier; a letter dated June 6, 2018 from appellant to T.C. requesting documents; an undated union policy document regarding work assignment violations; a letter dated October 21, 2022; and an October 18, 2022 letter requesting reconsideration. A medical report dated October 12, 2022 from Dr. Jacquelyn Muniz was also received.

By decision dated January 19, 2023, 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 review of an OWCP decision as a matter of right.² OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.³ 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.⁴ Timeliness is determined by the document receipt date, *i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS).⁵

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 of error.⁶ OWCP's regulations and procedures provide that OWCP will reopen a claimant's case for merit review,

² 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).

³ 20 C.F.R. § 10.607.

⁴ *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).

⁵ *Id.*

⁶ 20 C.F.R. § 10.607(b); *T.C.*, Docket No. 19-1709 (issued June 5, 2020); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's request for reconsideration demonstrates clear evidence of error on the part of OWCP.⁷

To demonstrate clear evidence of error, the evidence submitted must not only be of sufficient probative value to establish a clear procedural error, but 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.⁸ The Board notes that clear evidence of error is intended to represent a difficult standard.⁹ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹⁰ It is not enough merely to establish that the evidence could be construed so as to produce a contrary conclusion.¹¹ This entails a limited review by OWCP of the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.¹² In this regard, the Board will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹³ The Board makes an independent determination as to whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁴

ANALYSIS

The Board finds that OWCP properly determined that appellant's October 21, 2022 request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

As noted above, OWCP's regulations establish a one-year time limit for requesting reconsideration, which begins on the date of the most recent merit decision. Herein, the most recent merit decision was dated October 20, 2021. As OWCP received appellant's request for reconsideration on October 21, 2022, more than one year after the October 20, 2021 decision, the Board finds that the request was untimely filed.¹⁵ Consequently, appellant must demonstrate clear evidence of error by OWCP in denying her claim for compensation.¹⁶

⁷ *Id.* at § 10.607(b); *supra* note 5 at Chapter 2.1602.5a (February 2016).

⁸ *T.W.*, Docket No. 19-1821 (issued May 15, 2020).

⁹ *R.K.*, Docket No. 19-1474 (issued March 3, 2020).

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

¹¹ *T.C.*, *supra* note 7.

¹² *Id.*

¹³ *R.K.*, *supra* note 10.

¹⁴ *Id.*

¹⁵ *D.B.*, Docket No. 19-0648 (issued October 21, 2020); *R.T.*, Docket No. 20-0298 (issued August 6, 2020).

¹⁶ *Id.*

The Board further finds that appellant has not demonstrated clear evidence of error on the part of OWCP in its October 20, 2021 decision.

In support of appellant's untimely request for reconsideration, appellant submitted posts from an online chat forum, as well as other employing establishment documents and letters.

The term clear evidence of error is intended to represent a difficult standard.¹⁷ Appellant has not explained how the evidence submitted with her untimely request for reconsideration raised a substantial question as to the correctness of OWCP's October 20, 2021 merit decision.¹⁸ Thus, the Board finds that the evidence submitted on reconsideration does not demonstrate clear evidence of error on the part of OWCP in its October 20, 2021 decision.¹⁹

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

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.

¹⁷ *Id.*

¹⁸ *See C.M.*, Docket No. 19-0666 (issued October 23, 2019).

¹⁹ *See W.R.*, Docket No. 18-1042 (issued February 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 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