

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

K.P., Appellant	)	
	)	
and	)	Docket No. 23-0604
	)	Issued: September 18, 2023
U.S. POSTAL SERVICE, SPRING LAKE POST	)	
OFFICE, Spring Lake, MI, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On March 20, 2023 appellant filed a timely appeal from a September 20, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated September 8, 2021, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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.

**FACTUAL HISTORY**

On July 28, 2021 appellant, then a 50-year-old postmaster, filed an occupational disease claim (Form CA-2) alleging that he sustained carbon monoxide poisoning, as a result of exposure

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

to carbon monoxide gas from a boiler at the employing establishment. He noted that he first became aware of his condition and its relation to his federal employment on April 7, 2021. Appellant stopped work on June 22, 2021.

In an e-mail dated July 27, 2021, E.D., the Postmaster and Officer-in-Charge, related that on June 21, 2021 he was told to report to the employing establishment as the postmaster was out on medical leave. When he arrived at the employing establishment, he was informed that appellant had called in a carbon monoxide leak to the utility company. The utility company investigated, and no leak was found. Thereafter, the employing establishment maintenance department installed carbon monoxide testers, and tests were run three times a day, but no leak was detected. No other employee complained of carbon monoxide poisoning.

In a development letter dated July 30, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a factual questionnaire for his completion. In a separate development letter of even date, OWCP requested additional information from the employing establishment regarding appellant's potential exposure to carbon dioxide. It afforded both parties 30 days to submit the necessary evidence.

In support of his claim, appellant submitted his completed questionnaire in which he alleged continuing boiler leaks since 2019, a July 21, 2021 request for leave under the Family and Medical Leave Act (FMLA), a denial of his FMLA request, and a Michigan Gas Utilities November 7, 2019 caution -- hazardous condition form. He also submitted an e-mail he had sent to employing establishment officials on October 30, 2020 relating that in 2019 he had extreme headaches, it was determined that the employing establishment boiler was emitting carbon monoxide.

OWCP also received reports dated July 19 and 22, 2021 from Dr. Irma P. Parra, a family medicine specialist, who reported appellant had an elevated level of carboxyhemoglobin, which she attributed to carbon monoxide exposure at work.

By decision dated September 8, 2021, OWCP denied appellant's occupational disease claim finding the evidence insufficient to establish that he had been exposed to carbon monoxide at work.

OWCP subsequently received a July 27, 2021 response from the Occupational Safety and Health Administration (OSHA) advising that it had not determined whether a hazardous condition existed in appellant's workplace due to carbon monoxide from a malfunctioning boiler and would not investigate his allegation. It requested the employing establishment investigate and make any necessary modifications or corrections and to advise OSHA in writing no later than August 3, 2021 of the investigation results.

In a letter dated August 5, 2021, the employing establishment noted that it had been notified of a possible carbon monoxide leak on June 22, 2021. It noted that the boiler had been removed and a new boiler placed, but the new boiler was not hooked up and the gas line was capped off. The only unit that was currently using gas was the hot water heater. A representative from the Michigan Gas Utilities found acceptable levels of carbon monoxide within the hot water heater. One carbon monoxide detector was installed in the boiler room and another in the postmaster's

office. During the period June 23 through July 13, 2021 detector readings were all negative. The employing establishment noted that monitoring would continue until the new boiler was hooked up and no carbon monoxide leak is found.

On September 13, 2022 OWCP received appellant's undated letter requesting reconsideration of the September 8, 2021 decision and a form requesting reconsideration dated July 10, 2022. In his letter, appellant noted this was the third time sending his request for reconsideration. He asserted that he had submitted sufficient medical and factual evidence establishing his claim, noting that carbon monoxide testers were only installed in 2021 after he contacted OSHA.

In support of his request, appellant submitted bills from Trinity Health, a resubmitted copy of the July 22, 2021 report from Dr. Parra, and a February 19, 2021 laboratory requisitions for carboxyhemoglobin test.

OWCP also received a Caution-Hazardous Condition from Michigan Gas Utilities, which is either blank or illegible.

Appellant also resubmitted the July 27, 2021 e-mail from E.D. Additionally, he submitted e-mail correspondence to R.G. and L.T. regarding his claim and paperwork to be submitted, and between appellant and B.D. regarding switching his day off and noting problems with the boiler.

OWCP received a U.S. Postal receipt dated August 25, 2022 noting priority mail to London, Kentucky with delivery expected on August 29, 2022. It also received a page from an Equal Employment Affidavit (continuation sheet) signed by C.S. on September 2, 2021 stating that appellant alleged work exposure to carbon monoxide. The statement indicated that carbon monoxide was found in the employing establishment in October 2019, but had been fixed and carbon monoxide detectors were installed on the workroom floor and in appellant's office. Appellant called the gas company about a gas leak, in 2021, but the utility company found no leak.

By decision dated September 20, 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.<sup>2</sup> This discretionary authority, however, is subject to certain restrictions. A request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.<sup>3</sup> Timeliness is determined by the document receipt date (*i.e.*, the "received date")

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<sup>2</sup> *Id.* at § 8128(a). *See also J.M.*, Docket No. 22-0630 (issued February 10, 2023); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

<sup>3</sup> 20 C.F.R. § 10.607(a).

in OWCP's Integrated Federal Employees' Compensation System (iFECS)).<sup>4</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.<sup>8</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>9</sup> 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. To demonstrate clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or 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. The Board makes an independent determination as to whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>10</sup>

### 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.

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<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

<sup>5</sup> *J.M.*, *supra* note 2; *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).

<sup>6</sup> *See* 20 C.F.R. § 10.607(b); *J.M.*, *id.*; *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

<sup>7</sup> *J.M.*, *id.*; *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 4 at Chapter 2.1602.5 (September 2020).

<sup>8</sup> *A.M.*, Docket No. 20-1466 issued January 3, 2023; *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).

<sup>9</sup> *J.M.*, *supra* note 2; *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 4 at Chapter 2.1602.5a (September 2020).

<sup>10</sup> *J.M.*, *id.*; *U.C.*, Docket No. 19-1753 (issued June 10, 2020).

A request for reconsideration must be received within one year of the date of the last merit decision for which review is sought.<sup>11</sup> As appellant's request for reconsideration was not received by OWCP until September 13, 2022, more than one year after OWCP's issuance of its September 8, 2021, it was not timely filed. Appellant has alleged that he submitted his request timely, and that he had requested reconsideration three times. However, the record does not establish that a request for reconsideration was received prior to September 13, 2022, consequently, appellant must demonstrate clear evidence of error by OWCP in its September 8, 2021 decision.

The Board further finds that appellant has not demonstrated clear evidence of error.

After OWCP's issuance of its September 8, 2021 merit decision, OWCP received copies of prior medical evidence and copies of medical bills. However, this evidence is irrelevant as the underlying issue in this case is factual in nature, whether appellant established carbon monoxide exposure at work.<sup>12</sup> Therefore, this evidence also does not demonstrate clear evidence of error by OWCP in its September 8, 2021 decision.

On reconsideration appellant asserted that the evidence submitted established that his diagnosed carbon monoxide poisoning was due to carbon monoxide exposure at work due to a leaky boiler. Contrary to his assertions the record does not establish carbon monoxide exposure at work in 2021. OWCP received documents which indicated that a carbon monoxide leak had occurred at the employing establishment in 2019; however, none of the submitted documents establishes on its face that another leak occurred in 2021. The evidence submitted on reconsideration is not 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.<sup>13</sup> The Board finds that the evidence and argument submitted by appellant does not demonstrate on its face that OWCP committed an error when it denied his occupational disease claim in its September 8, 2021 decision.<sup>14</sup> Therefore, OWCP properly denied his 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, finding that it was untimely filed and failed to demonstrate clear evidence of error.

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<sup>11</sup> 20 C.F.R. § 10.607(a); *see T.G.*, Docket No. 22-0352 (issued September 29, 2022).

<sup>12</sup> *A.B.*, Docket No. 20-0561 (issued November 24, 2021); *N.V.*, Docket No. 20-0781 (issued November 18, 2020).

<sup>13</sup> *Supra* note 10.

<sup>14</sup> *See J.M.*, *supra* note 2; *S.C.*, Docket No. 19-1424 (issued September 15, 2020); *U.C.*, *supra* note 10.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 20, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2023  
Washington, DC

Alec J. Koromilas, 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