

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

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**D.B., Appellant** )

**and** )

**U.S. POSTAL SERVICE, POST OFFICE,** )  
**Silver Spring, MD, Employer** )  
\_\_\_\_\_ )

**Docket No. 21-0713**

**Issued: December 23, 2021**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge

PATRICIA H. FITZGERALD, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 9, 2021 appellant filed a timely appeal from a November 24, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated September 17, 2019, 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 April 7, 2017 appellant, then a 28-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 31, 2017 she sustained a right ankle sprain when she slipped

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

down a wet hill during the rain while in the performance of duty. She stopped work on the date of the alleged injury. OWCP initially accepted appellant's claim for sprain of the right ankle and subsequently expanded the acceptance of the claim to include post-traumatic plantar fasciitis and post-traumatic instability of the right ankle with osteochondral damage.

On June 24, 2019 appellant filed claims for compensation (Form CA-7) for disability from December 28, 2018 through April 8, 2019 and April 9 through June 21, 2019 as a result of her accepted employment injury.

OWCP subsequently received medical evidence.

In a July 3, 2019 letter, OWCP referenced appellant's claim for wage-loss compensation for disability from work for the period December 21, 2018 through April 8, 2019. It authorized payment for 2.87 hours on January 23, 2019 and 4.26 hours on February 22, 2019; it further noted, however, that the medical evidence of record was insufficient to establish the remainder of her claim for four hours on December 28, 2018.<sup>2</sup> OWCP advised appellant of the type of medical evidence needed to support her claim and afforded her 30 days to submit the necessary evidence.

In a separate development letter of even date, OWCP advised appellant that no evidence had been submitted to establish her claim for disability commencing April 9, 2019. It afforded her 30 days to submit the requested evidence.

OWCP thereafter received additional medical evidence.

On August 13, 2019 appellant filed additional Form CA-7 claims for wage-loss compensation and submitted medical evidence in support of her claims.

In a September 5, 2019 decision, OWCP denied, in part, appellant's claim for wage-loss compensation for disability from work from December 28, 2018 through April 8, 2019. It found that the medical evidence of record was sufficient to establish that she sought treatment of her accepted employment conditions for 2.87 hours on January 23, 2019 and 4.26 hours on February 22, 2019. OWCP further found, however, that the medical evidence of record was insufficient to support that appellant sought treatment for four hours on December 28, 2018. It noted that she did not submit medical evidence related to her treatment on December 28, 2018 in response to its July 3, 2019 development letter. OWCP advised that the employing establishment had not certified any other dates or hours claimed and, therefore, compensation was not payable for the claimed dates and hours, and no formal decision was necessary.

Appellant continued to file Form CA-7 claims for wage-loss compensation.

By decision dated September 17, 2019, OWCP denied appellant's claim for wage-loss compensation for disability commencing April 9, 2019, finding that the medical evidence of record

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<sup>2</sup> On August 27, 2019 OWCP paid appellant wage-loss compensation for time lost from work, 2.18 hours on December 21, 2018 and 3.5 hours on March 29, 2019.

was insufficient to establish disability from work due to the accepted March 31, 2017 employment injury.

Appellant subsequently submitted medical evidence dated from November 19, 2018 through March 24, 2020, which addressed her right ankle conditions, disability from work commencing on September 18, 2019 and March 24, 2020, and work restrictions.

On September 9, 2020 appellant requested reconsideration. Her appeal request form noted that she was requesting reconsideration of OWCP's September 5, 2019 decision, which addressed her claim for disability for the period December 28, 2018 through April 8, 2019. In an accompanying letter dated September 4, 2020, appellant noted that she had "submitted a CA-7 for compensation dated April 8, 2019 -- October 4, 2019." She contended that she remained disabled from her letter carrier duties and "should be able to receive compensation starting May 2019 -- October 4, 2019, due to [her] physician's orders and the worsening of [her] ankle."

OWCP received a February 14, 2010 report by Dr. Paul S. Cooper, a Board-certified orthopedic surgeon, who noted a history of the accepted March 31, 2017 employment injury, discussed findings on examination of appellant's right ankle, diagnosed the accepted condition of instability of right ankle joint, and recommended arthroscopic right ankle surgery.

By decision dated November 24, 2020, 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>3</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>4</sup> Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).<sup>5</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>6</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>7</sup> 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

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<sup>3</sup> 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).

<sup>4</sup> 20 C.F.R. § 10.607(a).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

<sup>6</sup> *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>7</sup> 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).

claimant's request for reconsideration demonstrates clear evidence of error on the part of OWCP.<sup>8</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>9</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>10</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>11</sup>

### ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of OWCP's September 5, 2019 decision, finding that it was untimely filed and failed to demonstrate clear evidence of error.

OWCP's regulations<sup>12</sup> and procedures<sup>13</sup> establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.<sup>14</sup> The most recent merit decision pertaining to appellant's claim for wage-loss compensation for disability on December 28, 2018 was dated September 5, 2019. As OWCP received her request for reconsideration on September 9, 2020, more than one year after the September 5, 2019 decision, the Board finds that it was untimely filed. Because appellant's request was untimely

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<sup>8</sup> *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 (February 2016).

<sup>9</sup> *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>10</sup> *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 5 at Chapter 2.1602.5(a) (February 2016).

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

<sup>12</sup> 20 C.F.R. § 10.607(a); *see F.N.*, Docket No. 18-1543 (issued March 6, 2019); *Alberta Dukes*, 56 ECAB 247 (2005).

<sup>13</sup> *Supra* note 5 at Chapter 2.1602.4 (February 2016); *see L.A.*, Docket No. 19-0471 (issued October 29, 2019); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

<sup>14</sup> 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

filed, she must demonstrate clear evidence of error on the part of OWCP in denying her claim for wage-loss compensation on the claimed date.

In support of her untimely request for reconsideration of OWCP's September 5, 2019 decision, appellant submitted Dr. Cooper's February 14, 2020 report. Dr. Cooper diagnosed the accepted condition of instability of right ankle joint and recommended arthroscopic right ankle surgery. He did not, however, offer a medical opinion addressing whether appellant's claimed disability on December 28, 2018 was due to the accepted March 31, 2017 employment injury. As such, this evidence does not address the relevant issue.<sup>15</sup>

OWCP also received evidence regarding appellant's medical status during the period November 19, 2018 through March 24, 2020. None of the evidence manifests on its face that it committed an error in denying appellant's claim for disability on December 28, 2018. Appellant has not submitted evidence of sufficient probative value to raise a substantial question as to the correctness of OWCP's decision. Thus, the evidence is insufficient to demonstrate clear evidence of error.<sup>16</sup>

The Board, thus, finds that appellant has not raised an argument or submitted any evidence that manifests on its face that OWCP committed an error in denying her claim for disability compensation.<sup>17</sup> Thus, the Board finds that her untimely request for reconsideration of OWCP's September 5, 2019 decision failed to demonstrate clear evidence of error.<sup>18</sup>

The Board notes, however, that appellant's September 9, 2020 request for reconsideration also contested OWCP's September 17, 2019 decision, which denied appellant's claim for compensation for disability commencing April 9, 2019. In her attached statement, appellant noted that she was contesting the denial of her claim for compensation for the period May through October 2019, which is part of the period covered by the September 17, 2019 decision. Accordingly, as OWCP has not addressed appellant's request for reconsideration of OWCP's September 17, 2019 decision, the Board will set aside the September 9, 2020 decision in part and remand the case for OWCP to review the evidence, make findings of fact, and provide reasons for its decision, pursuant to the standards set forth in section 5 U.S.C. § 8124(a) and 20 C.F.R. § 10.126. After this and other such further development as deemed necessary, it shall issue an appropriate decision.

### CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of OWCP's September 5, 2019 decision, finding that it was untimely filed and failed to demonstrate

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<sup>15</sup> *T.C.*, Docket No. 19-1709 (issued June 5, 2020); *B.W.*, Docket No. 19-0626 (issued March 4, 2020).

<sup>16</sup> *J.C.*, Docket No. 20-1250 (issued May 24, 2021); *W.D.*, Docket No. 19-0062 (issued April 15, 2019).

<sup>17</sup> *J.C.*, *id.*

<sup>18</sup> *Id.*

clear evidence of error. The Board further finds that this case is not in posture for decision with regard to appellant's request for reconsideration of OWCP's September 17, 2019 decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 24, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 23, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board