



the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the case.

### **ISSUE**

The issue is whether OWCP properly denied appellant's September 3, 2018 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

### **FACTUAL HISTORY**

On February 9, 2017 appellant, then a 45-year-old sheet metal mechanic, filed a traumatic injury claim (Form CA-1) alleging that on December 7, 2016 he sustained a lower back injury while in the performance of duty. He explained that he began to slip on a ladder, and when he stepped up to the top platform to move to an aircraft wing, he collapsed due to severe lower back pain. On the reverse side of the form, appellant's supervisor controverted the claim stating that appellant did not notify the employing establishment within 30 days of the injury.

By decision dated March 23, 2017, OWCP denied the claim, finding that the evidence of record was insufficient to establish that his diagnosed medical condition was causally related to the accepted December 7, 2016 employment incident.

On June 2, 2017 appellant, through counsel, requested reconsideration of OWCP's March 23, 2017 decision and submitted additional medical evidence in support of his claim. In an accompanying brief, counsel argued that the newly submitted medical evidence established appellant's traumatic injury claim.

By decision dated August 30, 2017, OWCP denied modification of the March 23, 2017 decision.

On September 3, 2018 appellant, through counsel, requested reconsideration of the August 30, 2017 decision. Counsel submitted a copy of the August 30, 2018 reconsideration request form, a brief dated August 30, 2018 asserting that causal relationship had been established in the claim based on newly submitted medical evidence, a statement from appellant describing a history of injury and his employment, and medical reports dated April 1, 2016 through October 2, 2017.

By decision dated October 9, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim, finding that the request was untimely filed and failed to demonstrate clear evidence of error.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

## LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.<sup>4</sup> 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.<sup>5</sup> Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).<sup>6</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>7</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>8</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 claimant's request for reconsideration demonstrates "clear evidence of error" on the part of OWCP.<sup>9</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>10</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>11</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 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.<sup>12</sup>

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<sup>4</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>5</sup> 20 C.F.R. § 10.607(a).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

<sup>7</sup> *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).

<sup>8</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 (1990).

<sup>9</sup> *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 6 at Chapter 2.1602.5 (February 2016).

<sup>10</sup> *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>11</sup> *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 6 at Chapter 2.1602.5(a) (February 2016).

<sup>12</sup> *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard. 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.<sup>13</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>14</sup>

### ANALYSIS

The Board finds that OWCP properly determined that appellant's September 3, 2018 request for reconsideration was untimely filed.

OWCP's regulations<sup>15</sup> and procedures<sup>16</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>17</sup> The most recent merit decision was OWCP's August 30, 2017 decision. As appellant's request for reconsideration was received on September 3, 2018, more than one year after the August 30, 2017 merit decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in its August 30, 2017 decision.<sup>18</sup>

The Board further finds, however, that the case is not in posture for decision as to whether appellant's September 3, 2018 reconsideration request demonstrated clear evidence of error.

OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.<sup>19</sup> Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.<sup>20</sup> Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.<sup>21</sup> As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the

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<sup>13</sup> *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 6 at Chapter 2.1602.5(a) (February 2016).

<sup>14</sup> *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

<sup>15</sup> 20 C.F.R. § 10.607(a); *see J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Alberta Dukes*, 56 ECAB 247 (2005).

<sup>16</sup> *Supra* note 6 at Chapter 2.1602.4 (February 2016); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

<sup>17</sup> 20 C.F.R. § 10.607(b); *see A.M.*, Docket No. 20-0143 (issued October 28, 2020); *Debra McDavid*, 57 ECAB 149 (2005).

<sup>18</sup> *Id.* at § 10.607(b); *see M.W.*, Docket No. 17-0892 (issued May 21, 2018); *see S.M.*, Docket No. 16-0270 (issued April 26, 2016).

<sup>19</sup> *T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607.

<sup>20</sup> 5 U.S.C. § 8124(a).

<sup>21</sup> 20 C.F.R. § 10.126.

reader to understand the precise defect of the claim and the kind of evidence which would overcome it.<sup>22</sup>

In denying appellant's September 3, 2018 reconsideration request, OWCP failed to analyze the evidence or argument as to whether it was sufficient to demonstrate clear evidence of error.<sup>23</sup> The October 9, 2018 decision simply noted: "[w]e did consider your request under 20 C.F.R. § 10.607." However, OWCP did not address the arguments made by appellant in his narrative statement or counsel in his August 30, 2018 brief, and provided no discussion relative to the new medical evidence submitted by appellant.<sup>24</sup> The Board will therefore set aside OWCP's October 9, 2018 decision and remand the case for an appropriate decision on appellant's untimely reconsideration request, which describes the evidence submitted on reconsideration and provides detailed reasons for accepting or rejecting the reconsideration request.<sup>25</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant's September 3, 2018 request for reconsideration was untimely filed. However, the Board further finds that the case is not in posture for decision with regard to whether the untimely reconsideration request demonstrates clear evidence of error.

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<sup>22</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

<sup>23</sup> See *Order Remanding Case, J.K.*, Docket No. 20-0556 (issued August 13, 2020).

<sup>24</sup> See *Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *R.C.*, Docket No. 16-0563 (issued May 4, 2016).

<sup>25</sup> See *Order Remanding Case, C.D.*, Docket No. 20-0450 (issued August 13, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 9, 2018 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: February 22, 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