

than 180 days elapsed from OWCP's last merit decision, dated January 28, 2016, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the claim.⁴

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 February 3, 2014 appellant, then a 46-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that, while sitting at her desk on January 24, 2014, her left foot got caught on a drawer as she turned in her chair to get up. She fell, landing on her right side, which caused right knee and lower back injuries. On the reverse side of the claim form, the employing establishment responded "yes" with regard to whether appellant was injured in the performance of duty.

On April 29, 2014 OWCP accepted the claim for contusion of the right knee and sprain of the back, lumbar region.

In an October 29, 2014 report, Dr. J. Todd Smith, an orthopedic surgeon, opined that in regard to her lumbar sprain and contusions to the right knee, appellant had completed all of the therapy and that the accepted conditions had resolved as of October 24, 2014. He explained that she was still symptomatic, however, from facet arthrosis and lumbar spondylosis which were not work related.

In a letter dated January 8, 2015, the employing establishment noted that appellant was to resume regular-duty work as of January 12, 2015, as there was no medical evidence providing work restrictions.

On January 23, 2015 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as the weight of the medical evidence established that she no longer had residuals or disability due to the January 24, 2014 work injury.

By decision dated March 13, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date.

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

On March 30, 2015 appellant requested a telephonic hearing, which was held before an OWCP hearing representative on November 18, 2015.

In a January 28, 2016 decision, OWCP's hearing representative affirmed that March 13, 2015 decision. OWCP found that there was no probative medical evidence of record, which challenged the findings of Dr. Smith. It further found that Dr. Smith was an appropriate specialist, who had treated appellant and offered reasoned opinion on the work injuries. OWCP found that the weight of medical evidence continued to rest with Dr. Smith.

On February 16, 2017 appellant, through counsel, requested reconsideration. She indicated that additional medical evidence was enclosed with her request. However, no additional medical evidence was received.

In a February 27, 2017 decision, OWCP 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.⁵ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁶ 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.⁷

OWCP will consider an untimely request for reconsideration only if the request demonstrates "clear evidence of error" on the part of OWCP in its most recent merit decision.⁸ The request must establish on its face that such decision was erroneous. To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by OWCP.⁹ The evidence must be positive, precise, and explicit and it must be apparent on its face that OWCP committed an error. It is not enough to merely show that the evidence could be construed to produce a contrary conclusion.¹⁰ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of

⁵ 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).

⁶ 20 C.F.R. § 10.607.

⁷ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the "received date" in the integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁸ 20 C.F.R. § 10.607(b).

⁹ See *Dean D. Beets*, 43 ECAB 1153 (1992).

¹⁰ See *Leona N. Travis*, 43 ECAB 227 (1991).

error.¹¹ 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 *prima facie* shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.¹² Where a request is untimely and fails to demonstrate clear evidence of error, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹³

ANALYSIS

In its February 27, 2017 decision, OWCP properly determined that appellant's reconsideration request was untimely filed. The last merit decision was dated January 28, 2016. As, appellant's request was received on February 16, 2017, more than one year after the January 28, 2016 merit decision, her request was untimely filed.¹⁴ Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in issuing the January 28, 2016 decision.

The Board finds that appellant has not demonstrated clear evidence of error on the part of OWCP. OWCP terminated appellant's compensation, effective March 13, 2015.

In her request for reconsideration, appellant indicated that she had attached additional medical evidence. However, no additional medical evidence was received.

Clear evidence of error is intended to represent a difficult standard. Even the submission of a detailed, well-rationalized medical report which, if submitted before the merit decision was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.¹⁵ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁶

As appellant did not submit additional medical evidence in support of her reconsideration of the merits of her claim, she did not demonstrate clear evidence on the part of OWCP in issuing the January 28, 2016 decision.

On appeal counsel argues that appellant's reconsideration request was timely, citing to a certified mail receipt which indicated that it was delivered on February 2, 2017. As noted above, the request must be received by OWCP within one year of the date of issuance of OWCP's decision from which review is sought, and timeliness is determined by the document received date as

¹¹ See *Jesus D. Sanchez*, 41 ECAB 964 (1990).

¹² *Thankamma Mathews*, 44 ECAB 765, 770 (1993).

¹³ 20 C.F.R. § 10.608(b).

¹⁴ See *supra* note 5. The reconsideration request must be received by OWCP within one year of the date of OWCP's decision for which review is sought.

¹⁵ *James R. Mirra*, 56 ECAB 738 (2005); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5(a) (October 2011).

¹⁶ *Nancy Marciano*, 50 ECAB 110 (1998).

recorded in iFECS. As the iFECS received date was February 16, 2017, the request was untimely filed.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim as it was untimely filed and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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