

ISSUE

The issue is whether OWCP properly denied appellant's May 18, 2018 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On August 15, 2011 appellant, then a 52-year-old information systems manager, filed a traumatic injury claim (Form CA-1) for head, shoulder, back, and leg injuries that allegedly occurred while in the performance of duty on May 10, 2011. He reported that, as he was walking down steps, he reached for the handrail, which was loose and then lost his balance. Appellant claimed to have twisted his leg, and hit his head, shoulder, and back. On the reverse side of the Form CA-1, the employing establishment challenged the claim noting that he had not submitted any medical documentation. It also controverted continuation of pay (COP) because appellant did not submit his Form CA-1 within 30 days of the alleged injury.

In a September 23, 2011 development letter, OWCP requested that appellant provide additional factual information regarding the alleged May 10, 2011 employment incident. It also requested that he submit a narrative medical report from his attending physician that included a diagnosis and a medical explanation as to how the reported employment incident either caused or aggravated a medical condition. OWCP afforded appellant 30 days to respond. No additional evidence was received.

By decision dated October 28, 2011, OWCP denied entitlement to COP because appellant had not filed his traumatic injury claim within 30 days of the alleged May 10, 2011 injury. In a separate decision also dated October 28, 2011, it denied his traumatic injury claim because he failed to establish the medical component of fact of injury. OWCP explained that, while appellant established that the May 10, 2011 employment incident occurred as alleged, he failed to submit any medical evidence containing a diagnosis in connection with the accepted employment incident. It concluded, therefore, that he had not met the requirements to establish an injury as defined under FECA.

By letter dated March 8, 2018, appellant inquired about the status of his traumatic injury claim. He noted that he "never received a disposition and/or settlement on [his] claim." Appellant's March 8, 2018 correspondence, which OWCP received on March 29, 2018, included a return address that was different than appellant's address of record.

By letter dated April 17, 2018, OWCP informed appellant that it had not received a response to its development letter of September 23, 2011. It further advised that it formally denied his claim by decision dated October 28, 2011, and provided a copy of its decision. OWCP directed its correspondence to the alternate address appellant provided in his March 8, 2018 letter.

On May 18, 2018 appellant requested reconsideration. He explained that he never received the September 23, 2011 development letter or the October 28, 2011 decision that OWCP previously sent to his address of record. Appellant noted that he was incarcerated and did not have an opportunity to receive the previous mail and/or respond appropriately. He further indicated that

he could provide the necessary medical documents to support his claim once he contacted his family physician. No additional evidence was received.

By decision dated May 29, 2018, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It noted that, while he claimed not to have received the September 23, 2011 development letter or the October 28, 2011 decision that were sent to his address of record, the documents had not been returned to OWCP. OWCP explained that, under the circumstances, the previous documents were presumed to have been timely received by appellant.

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.³ 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.⁴ 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).⁵ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁶

OWCP may not deny a reconsideration request solely because it was untimely filed. When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error.⁷ If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review.⁸

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP. The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence that 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 to merely 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

³ 5 U.S.C. § 8128(a); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁴ 20 C.F.R. § 10.607(a).

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

⁶ *E.R.*, Docket No. 09-599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁷ *See* 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁸ *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also* 20 C.F.R. § 10.607(b); *supra* note 5 at Chapter 2.1602.5 (February 2016).

evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.⁹

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 shows 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.¹⁰ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹¹

ANALYSIS

The Board finds that OWCP properly denied appellant's May 18, 2018 request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

In his request for reconsideration, appellant claimed not to have received either the September 23, 2011 development letter or OWCP's October 28, 2011 decisions. The record indicates that OWCP properly mailed the development letter and the October 28, 2011 decisions to appellant's address of record. Moreover, there is no evidence indicating these mailings were returned as undeliverable. Absent evidence to the contrary, a notice properly mailed to the address of record is presumed to have been received by the addressee.¹² This presumption is known as the "mailbox rule."¹³ If a claimant changes his or her address, the onus is on the claimant to notify OWCP of this change in writing.¹⁴ There is no evidence in the record that appellant provided OWCP written notification of his change of address and/or incarceration in advance of the September 23, 2011 development letter or OWCP's October 28, 2011 decisions.

An application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.¹⁵ As appellant's request for reconsideration was not received by OWCP until May 18, 2018, more than one year after the issuance of its October 28, 2011 decision, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in its November 7, 2016 decision.

⁹ *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁰ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 5 at Chapter 2.1602.5(a) (February 2016).

¹¹ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹² *U.C.*, Docket No. 16-0855 (issued December 8, 2017).

¹³ *Id.*

¹⁴ *M.P.*, Docket No. 17-0046 (issued June 9, 2017).

¹⁵ *Supra* note 4.

To establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by OWCP.¹⁶ The evidence must be positive, precise, and explicit and it must be apparent on its face that OWCP committed an error.¹⁷ On reconsideration appellant did not submit any evidence or argument relevant to the issues addressed by OWCP in its October 28, 2011 decisions. Accordingly, OWCP properly found that he did not demonstrate clear evidence of error.

CONCLUSION

The Board finds that OWCP properly denied appellant's May 18, 2018 request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2019
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

¹⁶ See *supra* note 9.

¹⁷ *Id.*