

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

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T.G., Appellant)	
)	
and)	Docket No. 22-0828
)	Issued: December 28, 2022
DEPARTMENT OF DEFENSE, DEFENSE)	
INFORMATION SYSTEMS AGENCY,)	
SCOTT AIR FORCE BASE, IL, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On May 5, 2022 appellant filed a timely appeal from an April 8, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated October 3, 2018, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (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 March 14, 2022 request for reconsideration of the merits of her claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior decisions and order are incorporated herein by reference. The relevant facts are as follows.

On April 9, 2015 appellant, then a 53-year-old financial management technician, filed an occupational disease claim (Form CA-2) alleging stress-related conditions, which she attributed to her work environment. She noted that she first became aware of her claimed conditions on January 1, 2013 and first realized their relation to her federal employment on February 15, 2014. Appellant stopped work on March 12, 2015 and returned to work on April 7, 2015 with no change in her duties/assignments.

In addition to the Form CA-2, OWCP received a description of the financial management technician position, as well as a December 4, 2011 notification of personnel action (Standard Form 50) memorializing a within-grade increase, effective December 18, 2011.

In a June 25, 2015 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and afforded her 30 days to respond.

On August 18, 2015 OWCP received an undated statement in which appellant provided an extensive discussion of the stressful incidents and conditions at work that she believed had caused her to sustain the medical conditions delineated on her Form CA-2. Appellant indicated that she sustained employment-related stress beginning on March 3, 2009 when she started working under a new immediate supervisor in the financial section. She asserted that, since that time, her supervisor unfairly harassed her regarding various work matters, including criticizing the wording she used in work documents, without providing her adequate training or guidance on how to carry out her work assignments. Appellant claimed that her supervisor scrutinized her work more closely than that of other employees and that she issued her improper performance appraisal ratings beginning in 2009. She asserted that on March 4, 2009 another supervisor harassed her by yelling at her in the presence of other employees. Appellant further claimed that, in October 2011, management improperly failed to consider her for promotion. She described several instances in February and March 2012 when she believed that a coworker unfairly criticized her work product, including her choice of the wording of e-mail communications. Appellant alleged that on October 12, 2012 her supervisor made false statements about her work performance in connection with a work appraisal rating and improperly denied her request on that date to leave the office and take sick leave.

Appellant further alleged that on November 28, 2012 her supervisor unfairly criticized the manner in which she prepared e-mail communications. She indicated that on October 31, 2013 her supervisor gave her feedback regarding a performance appraisal rating, which she felt was unwarranted. Appellant alleged that her supervisor told her that no one wanted to promote her. On November 13, 2013 she became emotional and left the office because her supervisor told her

² Docket No. 16-1690 (issued September 7, 2017); Docket No. 20-0329 (issued October 19, 2020); *Order Dismissing Appeal*, Docket No. 21-0073 (issued October 29, 2021).

that a coworker was frustrated about continuing to receive documents faxed from her physician. Appellant claimed that on March 7, 2014 her supervisor unreasonably told her that she should not spend time on training despite the fact that she felt it was necessary for her job. She indicated that on March 8, 2014 her supervisor advised her that she could not take any leave until she built up leave again. Appellant claimed that she was the only person who was monitored by this supervisor for leave usage. She alleged that on July 2, 2014 her supervisor unfairly criticized her by advising her that a coworker had complained that she “did n[o]t know what [she] was doing” with respect to a work matter. Appellant further asserted that on September 4, 2014 another supervisor laughed at her when she mentioned taking sick leave in a manner that suggested she believed that she was “faking” her need to take sick leave. She alleged that on October 29, 2014 her supervisor wrongly accused her of slamming a door on an earlier occasion. Appellant indicated that on April 10, 2015 her supervisor interrupted her while she was receiving guidance on a work task from a coworker.

Appellant also submitted numerous reports from health care providers. In a September 3, 2014 report, Dr. Panduranga Kini, a Board-certified psychiatrist, provided an impression of “anxiety type of symptoms.” On October 8, 2015 Dr. Steven D. Pritchett, a Board-certified family medicine specialist, indicated that appellant reported experiencing stress from work and was being treated by a psychiatrist for depression, anxiety, and panic disorder.

In a February 16, 2016 development letter, OWCP again informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. The enclosed questionnaire included a description of a series of alleged employment incidents from November 2013 through October 2014. OWCP requested that appellant submit copies of grievances and/or equal employment opportunity (EEO) complaints that were filed with respect to the alleged working conditions. It again afforded appellant 30 days to respond.

Appellant subsequently submitted several witness statements from early-2016 in which coworkers discussed their observations about her interactions with supervisors and fellow coworkers. She also submitted documents concerning an EEO claim she filed with respect to some of her claimed employment factors. The documents included a copy of an unsigned “EEO Settlement Agreement.” In an undated document received by OWCP on March 3, 2016, appellant discussed the medical treatment of her stress-related conditions. She also submitted additional medical evidence, including an August 24, 2015 report from Dr. Jeffrey S. Chalfant, an osteopath Board-certified in psychiatry, who diagnosed major depressive disorder (single episode, moderate degree), and unspecified anxiety state.

By decision dated March 22, 2016, OWCP denied appellant’s claim, finding that she failed to establish a compensable employment factor. It discussed most of the alleged claimed employment factors commencing in November 2013, which she detailed in her statement, but did not discuss those alleged to have occurred between March 2009 and October 2013. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 19, 2016 appellant requested reconsideration of the March 22, 2016 decision. In support thereof, she submitted a document in which she further discussed the various incidents and conditions at work, which she believed that caused the claimed stress-related conditions.

In an April 29, 2016 statement, a coworker discussed appellant's interactions with supervisors. Appellant also submitted additional medical evidence.

By decision dated July 18, 2016, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board and, by decision dated September 7, 2017,³ it set aside OWCP's March 22, 2016 decision. The Board found that OWCP failed to adequately address a substantial portion of her claimed employment factors, *i.e.*, the numerous factors alleged between March 2009 and October 2013, and to make adequate findings of fact regarding those allegations. The Board remanded the case to OWCP for further development of the evidence regarding appellant's stress-related occupational disease claim.

On remand OWCP solicited and received additional comments and documentation from the employing establishment regarding appellant's claimed employment factors.

By decision dated March 21, 2018, OWCP again denied appellant's claim, finding that she had not established a compensable employment factor.

On April 25, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. She subsequently submitted additional evidence in support of her claim, including medical reports, witness statements of current and former coworkers/supervisors, and copies of performance appraisals.

By decision dated October 3, 2018, OWCP's hearing representative affirmed the March 21, 2018 decision.

On September 19, 2019 appellant requested reconsideration of her claim. In support thereof, she submitted a January 30, 2019 report from Dr. Salma Mannan-Hilaly, a Board-certified family medicine specialist, who noted that appellant had been diagnosed with major depression, generalized anxiety disorder, post-traumatic stress disorder (PTSD), panic disorder, nausea, fatigue, somatization disorder, and several orthopedic and gastrointestinal conditions. Dr. Mannan-Hilaly opined that these conditions had been "caused from emotional distress and harassment, due to [appellant's] work environment" from 2009 through 2015 and that her supervisor was the major cause for "her physical and mental health concerns." In a September 6, 2019 report, she advised that, from 2009 through 2015, appellant was placed on medication for anxiety disorder and major depression due to her supervisor who "caused [appellant's?] sickness and depression due to the hostile work environment."

In a March 1, 2019 report, Carol A. Sterling, a licensed clinical professional counselor, opined that the "psychological atmosphere in the workplace" had a profoundly negative effect on appellant's psychic safety and personal worth. In a June 20, 2019 report, Dr. Scott Norris, a Board-certified neurologist, noted that he had diagnosed appellant with functional myoclonus, tremor, and gait (greatly exacerbated by stress), and cervical myelopathy secondary to cervical stenosis.

³ Docket No. 16-1690 (issued September 7, 2017).

By decision dated November 7, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By nonmerit decision dated October 19, 2020,⁴ the Board affirmed OWCP's November 7, 2019 decision.

On October 22, 2020 appellant appealed OWCP's October 3, 2018 merit decision. However, by order dated October 29, 2021,⁵ the Board dismissed the appeal as untimely filed.

On December 13, 2021 appellant again requested reconsideration of the merits her claim and argued that the evidence of record supported her claim for a work-related stress-related condition. She submitted copies of previously submitted documents, including January 30 and September 6, 2019 reports from Dr. Mannan-Hilaly, a March 1, 2019 report from Ms. Sterling, a June 20, 2019 report from Dr. Norris, and a December 16, 2020 report from Dr. Chalfant. Appellant also submitted a January 25, 2021 report from Dr. Mannan-Hilaly, which had not been previously submitted. In this report, Dr. Mannan-Hilaly opined that appellant's diagnosed conditions of major depressive disorder, major anxiety, tremors, and PTSD "were brought on by constant daily stressors at the job by management."

By decision dated December 16, 2021, OWCP denied appellant's December 13, 2021 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On March 14, 2022 appellant again requested reconsideration of the merits of her claim. In support of her request for reconsideration, she submitted copies of excerpts from OWCP's previous decisions and copies of her own previously submitted reconsideration request and appeal letters. Appellant also submitted copies of previously submitted documents, including a September 6, 2019 report from Dr. Mannan-Hilaly, a March 1, 2019 report from Ms. Sterling, and a June 20, 2019 report from Dr. Norris.

By decision dated April 8, 2022, OWCP denied appellant's March 14, 2022 request for reconsideration of the merits of her claim as 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.⁶ 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.⁷ Timeliness is determined by the document receipt date of

⁴ Docket No. 20-0329 (issued October 19, 2020).

⁵ *Order Dismissing Appeal*, Docket No. 21-0073 (issued October 29, 2021).

⁶ 5 U.S.C. § 8128(a); *see also* A.B., Docket No. 19-1539 (issued January 27, 2020); W.C., 59 ECAB 372 (2008).

⁷ 20 C.F.R. § 10.607(a).

the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS).⁸ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁹

OWCP may not deny a request for reconsideration 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.¹⁰ If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review.¹¹

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹² The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.¹³ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹⁴ 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 request for reconsideration bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.¹⁵ 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.¹⁶

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁷ The claimant must present evidence which on its face shows that OWCP made an error.¹⁸ Evidence such as a detailed, well-rationalized medical report which, if submitted before

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (September 2020).

⁹ *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).

¹⁰ *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).

¹¹ *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).

¹² *A.A.*, Docket No. 19-1219 (issued December 10, 2019); *J.F.*, Docket No. 18-1802 (issued May 20, 2019); *J.D.*, Docket No. 16-1767 (issued January 12, 2017); *Dean D. Beets*, 43 ECAB 1153 (1992).

¹³ *J.D.*, Docket No. 19-1836 (issued April 6, 2020); *Leone N. Travis*, 43 ECAB 227 (1999).

¹⁴ *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁵ *T.N.*, Docket No. 18-1613 (issued April 29, 2020).

¹⁶ *J.M.*, Docket No. 19-1842 (issued April 23, 2020).

¹⁷ *See supra* note 8 at Chapter 2.1602.5(a) (September 2020); *see also J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹⁸ *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.¹⁹ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.²⁰

ANALYSIS

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

As noted above, a request for reconsideration must be received within one year of the date of the last merit decision for which review is sought.²¹ As appellant's request for reconsideration was not received by OWCP until March 14, 2022, more than one year after its October 3, 2018 merit decision, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in its October 3, 2018 decision.

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

In support of her untimely request for reconsideration, appellant submitted copies of excerpts from OWCP's previous decisions and copies of her own previously submitted reconsideration request and appeal letters.

In support of her untimely request for reconsideration, appellant also submitted copies of previously submitted documents, including a September 6, 2019 report from Dr. Mannan-Hilaly, a March 1, 2019 report from Ms. Sterling, and a June 20, 2019 report from Dr. Norris. The Board finds, however, that the submission of these reports does not establish clear evidence of error in OWCP's October 3, 2018 decision. However, even if employment factors were established and an evaluation of the medical evidence was undertaken, these reports would not raise a substantial question concerning the correctness of OWCP's October 3, 2018 merit decision.

As noted, clear evidence of error is intended to represent a difficult standard.²² Even a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical evidence requiring further development is insufficient to demonstrate clear evidence of error. It is not enough to show that evidence could be construed so as to produce a contrary conclusion. Instead, the evidence must shift the weight in appellant's favor.²³

The Board finds that the evidence submitted on reconsideration does not demonstrate on its face that OWCP committed error when it found in its October 3, 2018 decision that appellant

¹⁹ *Id.*

²⁰ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

²¹ *See supra* note 7.

²² *See supra* note 17.

²³ *M.E.*, Docket No. 18-1442 (issued April 22, 2019).

failed to establish her emotional condition claim.²⁴ Therefore, OWCP properly denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

CONCLUSION

The Board finds that OWCP properly denied appellant's March 14, 2022 request for reconsideration of the merits of her claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

²⁴ See *S.F.*, Docket No. 09-0270 (issued August 26, 2009).