

On December 24, 2002 appellant, then a 53-year-old supervisory general engineer, filed an occupational disease claim (Form CA-2) alleging that he developed a herniated disc at L4-5 due to factors of his federal employment, including riding the employing establishment's handicapped vehicles. He noted that he first became aware of his condition on December 17, 2001, and realized its relation to his federal employment on November 28, 2002. Appellant stopped work on August 12, 2002. On November 15, 2006 OWCP accepted appellant's claim for lumbar strain, resolved.

By decision dated November 27, 2009, OWCP expanded the acceptance of appellant's claim for temporary aggravation of lumbar degenerative disc disease and found that it had resolved.

On December 22, 2009 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was converted to a review of the written record at appellant's request. By decision dated June 24, 2010, OWCP's hearing representative affirmed the November 27, 2009 decision.

Appellant appealed to the Board. By decision dated December 21, 2011, the Board affirmed the June 24, 2010 decision.³

On December 21, 2012 appellant requested reconsideration. No additional evidence was received.

By decision dated December 27, 2012, OWCP denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

Appellant appealed to the Board. By decision dated December 13, 2013, the Board set aside the December 27, 2012 decision and remanded the case for OWCP to apply the proper standard of review for a timely request for reconsideration as set forth in 20 C.F.R. § 10.606(b)(3).⁴

By decision dated January 10, 2014, OWCP denied modification of its prior decision.

Appellant requested reconsideration on January 9, 2015, August 5, 2016, and January 2, 2018. By decisions dated August 7, 2015, December 29, 2016, and March 21, 2018, respectively, OWCP denied modification of its prior decisions.

On March 18, 2019 OWCP requested reconsideration of the March 21, 2018 decision.

By decision dated March 21, 2019, OWCP denied appellant's request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

On April 18, 2019 appellant again requested reconsideration.

³ Docket No. 11-131 (issued December 21, 2011).

⁴ Docket No. 13-1577 (issued December 13, 2013).

In a statement dated October 11, 2021, appellant alleged that there was clear evidence of error in OWCP's decisions and actions. He asserted that OWCP rapidly denied his reconsideration request without reviewing new medical documentation. Appellant also contended that the new medical documentation supported that he had ongoing conditions of his low back injuries. He submitted: an outline of the facts of his case; copies of his March 17, 2019 reconsideration request; OWCP's March 21, 2019 denial decision; April 19, 2019 correspondence from OWCP transcribed telephone messages from an OWCP staff member; and a medical journal article. Appellant also submitted medical reports dated March 18, 2019 and October 12, 2020, by Dr. Heather R. Kroll, a Board-certified physiatrist and pain medicine specialist.

By decision dated October 22, 2021, OWCP denied appellant's request for reconsideration, 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.⁵ To be entitled to a merit review of an OWCP decision, a request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ Timeliness is determined by the document receipt date of the request for reconsideration as is indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS).⁷ The Board has found that the imposition of this one-year filing limitation does not constitute an abuse of discretion.⁸

OWCP may not deny a request for reconsideration solely because it was untimely filed. When a request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether the request demonstrates clear evidence that OWCP's most recent merit decision was in error.⁹ 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 demonstrates clear evidence of error on the part of OWCP.¹⁰ In this regard,

⁵ 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).

⁶ 20 C.F.R. § 10.607(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁸ *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).

⁹ *See* 20 C.F.R. § 10.607(b); *R.S.*, Docket No. 19-0180 (issued December 5, 2019); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

¹⁰ *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; *supra* note 7 at Chapter 2.1602.5a (September 2020).

OWCP will limit its focus to a review of how the newly-submitted evidence bears on the prior evidence of record.¹¹

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue decided by OWCP. The evidence must be positive, precise, and explicit, and it must manifest on its face that OWCP committed an error.¹² It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹³ 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 evidence of error on the part of OWCP.¹⁴ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP such that it abused its discretion in denying merit review in the face of such evidence.¹⁵

ANALYSIS

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

OWCP's regulations¹⁶ and procedures¹⁷ establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case. Its most recent merit decision was issued on March 21, 2018. As appellant's request for reconsideration was not received by OWCP until April 18, 2019, more than one year after the March 21, 2018 decision, pursuant to 20 C.F.R. § 10.607(a), the Board finds that the request for reconsideration was untimely filed. Consequently, he must demonstrate clear evidence of error by OWCP in denying the claim.¹⁸

The Board further finds that the case is not in posture for decision with regards to clear evidence of error. In its October 22, 2021 decision, OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its

¹¹ *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).

¹² 20 C.F.R. § 10.607(b); *B.W.*, Docket No. 19-0626 (issued March 4, 2020); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

¹³ *See G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

¹⁴ *B.W.*, *supra* note 12.

¹⁵ *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

¹⁶ 20 C.F.R. § 10.607(a); *see L.T.*, Docket No. 21-0844 (issued April 21, 2023); *J.W.*, Docket No. 18-0703 (issued November 14, 2018).

¹⁷ *Supra* note 7 at Chapter 2.1602.4.

¹⁸ 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 21-1152 (issued July 13, 2023); *S.C.*, Docket No. 20-1537 (issued April 14, 2021); *see Debra McDavid*, 57 ECAB 149 (2005).

implementing regulations.¹⁹ Section 8124(a) of FECA provides that it shall determine and make a finding of fact and make an award for or against payment of compensation.²⁰ OWCP's regulations at 20 C.F.R. § 10.126 provide that the decision of the director of OWCP shall contain findings and facts and a statement of reasons.²¹ As well, its procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.²² In the October 22, 2021 decision, OWCP failed to explain why appellant's request for reconsideration was insufficient to demonstrate clear evidence of error.

The Board will therefore set aside OWCP's October 22, 2021 decision and remand the case for findings of fact and a statement of reasons, to be followed by an appropriate decision regarding appellant's reconsideration request, which describes the evidence submitted on reconsideration and provides detailed reasons for accepting or rejecting the reconsideration request.²³

CONCLUSION

The Board finds that OWCP properly determined that appellant's request for reconsideration was untimely filed. The Board further finds, however, that the case is not in

¹⁹ See *T.J.*, Docket No. 21-0586 (issued September 30, 2021); *Order Remanding Case, W.D.*, Docket No. 20-0859 (issued November 20, 2020); *Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *Order Remanding Case, T.P.*, Docket No. 19-1533 (issued April 30, 2020); see also *id.* at § 10.607(b).

²⁰ 5 U.S.C. § 8124(a).

²¹ 20 C.F.R. § 10.126.

²² *Supra* note 7 at Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

²³ 5 U.S.C. § 8124(a). All evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, the evidence should be referenced by author and date. *Id.* at Chapter 2.1401.5b(2) (November 2012).

posture for decision with regard to whether appellant's request for reconsideration demonstrated clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2021 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: April 5, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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