

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

V.W., Appellant)	
)	
and)	Docket No. 24-0236
)	Issued: April 16, 2024
FEDERAL DEPOSIT INSURANCE)	
CORPORATION, DALLAS REGIONAL)	
OFFICE, Dallas, TX, 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 January 8, 2024 appellant filed a timely appeal from an August 8, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated May 25, 2022, 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the August 8, 2023 decision, and on appeal, appellant submitted additional evidence. 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.*

ISSUE

The issue is whether 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.

FACTUAL HISTORY

On February 5, 2014 appellant, then a 37-year-old legal technician, filed an occupational disease claim (Form CA-2) alleging that the numbness, tingling, and pain in her knees, feet, ankles, wrists, and elbows were due to repetitive motions she had performed at work since 2010. She noted that her job involved two to three hours of standing, four to six hours of typing, sorting, printing emails, preparing folders for attorneys, retrieving mail, logging into the computer, performing research, copying files, delivering documents on several floors, and bending/stooping. Appellant noted that she first became aware of her conditions January 7, 2014 and realized their relation to her federal employment on January 31, 2014.³ OWCP accepted the claim for bilateral carpal tunnel syndrome; other synovitis and tenosynovitis, right hand; lesion of ulnar nerve, right upper limb; impingement of right shoulder; bilateral wrist sprain; bilateral ankle sprain; bilateral sprain of knee, lateral collateral ligament; bilateral planar fibromatosis; sprain of cruciate ligament right knee; derangement of posterior horn of right medial meniscus, old disruption of anterior cruciate ligament, right; localized primary osteoarthritis, lower right leg. Appellant received wage-loss compensation on the supplemental rolls as of March 10, 2014 and on the periodic rolls as of April 5, 2015.

On December 13, 2021 appellant filed a claim for travel reimbursement (Form OWCP-957), indicating that on intermittent dates between January 2 and August 13, 2019 she traveled to medical appointments in association with her accepted employment injury. She submitted evidence, including medical notes from dates of service in 2019, in support of her claim.

In an April 19, 2022 development letter, OWCP advised appellant of the deficiencies in her claim for travel reimbursement. It afforded her 30 days to submit the necessary evidence.

In a May 14, 2022 statement, appellant indicated that she was not aware of a time limit to submit a request for travel reimbursement. She indicated that she was in financial hardship and that she needed her travel reimbursements from 2019.

By decision dated May 25, 2022, OWCP denied appellant's claim for travel reimbursement during the claimed specific dates in 2019 as it was not filed within the one-year time limit, pursuant to 20 C.F.R. § 10.803.

³ OWCP assigned the present claim OWCP File No. xxxxxx074. Appellant has a prior claim under OWCP File No. xxxxxx369, which OWCP accepted for a November 14, 2012 lumbosacral sprain, head contusion, abdominal strain, thoracic sprain, cervical sprain, bilateral arm sprain/strain, chronic pain syndrome, generalized anxiety disorder, other sprain of left shoulder joint, contusion of unspecified part of head, other spondylosis with radiculopathy, lumbar region, and major depressive disorder, single episode, unspecified. Appellant's claims have been administratively combined with OWCP File No. xxxxxx369 serving as the master file.

On December 5, 2022 appellant requested reconsideration of OWCP's May 25, 2022 decision. OWCP received several corrected claims for travel reimbursement, wherein she noted additional travel dates in 2019.

On July 27, 2023 appellant again requested reconsideration of OWCP's May 25, 2022 decision.

By decision dated August 8, 2023, 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 a review of an OWCP decision as a matter of right.⁴ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁵ 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.⁶

OWCP procedures require a review of the record to determine whether the application for reconsideration was received within one-year of a merit decision. The one-year period begins on the date of the original decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board, and any merit decision following action by the Board, but does not include prerecoupment hearing decisions.⁷ Timeliness is determined by the document receipt date of the reconsideration request, *i.e.*, the received date in the Integrated Federal Employees' Compensation System (iFECS). If the request for reconsideration has a document received date greater than one year, the request must be considered untimely.⁸

OWCP will consider an untimely request for reconsideration only if it demonstrates clear evidence of error on the part of it in its most recent merit decision. The request must establish, on its face, that such decision was erroneous.⁹ The term clear evidence of error is intended to represent a difficult standard. If clear evidence of error has not been presented, OWCP should

⁴ 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).

⁵ 20 C.F.R. § 10.607.

⁶ *Id.* at § 10.607(a). 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 (September 2020).

⁷ *Id.* at Chapter 2.1602.4a. (September 2020).

⁸ *Id.* at Chapter 2.1602.4b (September 2020); *see also S.J.*, Docket No. 19-1864 (issued August 12, 2020); *W.A.*, Docket No. 17-0225 (issued May 16, 2017).

⁹ *W.A., id.; D.O.*, Docket No. 08-1057 (issued June 23, 2009); *Robert F. Stone*, 57 ECAB 292 (2005).

deny the request by letter decision, which includes a brief evaluation of the evidence submitted and a finding made that clear evidence of error has not been shown.¹⁰

ANALYSIS

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

The case record establishes that appellant requested reconsideration of the May 25, 2022 merit decision on December 5, 2022. As appellant filed a request for reconsideration within one year of the May 25, 2022 merit decision, the Board finds that OWCP improperly applied the legal standard for cases where reconsideration is requested after more than one year has elapsed. OWCP should have applied the standard reserved for timely reconsideration requests as set forth in 20 C.F.R. § 10.606(b)(3).¹¹ Since it erroneously reviewed the evidence submitted in support of appellant's reconsideration request under the more stringent clear evidence of error standard, the Board will remand the case for review of this evidence under the proper standard of review for a timely reconsideration request, to be followed by an appropriate decision.

CONCLUSION

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

¹⁰ *Supra* note 6 at Chapter 2.1602.5a (September 2020).

¹¹ 20 C.F.R. § 10.606(b)(3) of OWCP's regulations provide that a request reconsideration must be in writing and set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.

ORDER

IT IS HEREBY ORDERED THAT the August 8, 2023 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 16, 2024
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