

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

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J.D., Appellant)	
)	
and)	Docket No. 24-0695
)	Issued: August 2, 2024
U.S. POSTAL SERVICE, OAKLAND)	
PROCESSING & DISTRIBUTION CENTER,)	
Oakland, CA, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 7, 2024 appellant filed a timely appeal from a March 6, 2024 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 6, 1999, 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 request for reconsideration, 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 as set forth in the Board's prior decision and prior order are incorporated herein by reference. The relevant facts are as follows.

On May 15, 1998 appellant, then a 38-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on April 13, 1998 he was falsely accused by a coworker, V.H., of using "improper language" while in the performance of duty. This resulted in an April 17, 1998 "just cause" interview for unacceptable conduct, which he contended aggravated his preexisting psychological condition. Appellant stopped work on April 18, 1998 and returned to work on May 15, 1998.³

By decision dated July 6, 1998, OWCP denied appellant's claim. It found that the evidence failed to establish a compensable employment factor. OWCP concluded, therefore, that appellant has not established that his emotional condition occurred in the performance of duty.

On July 24, 1998 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held before the Branch of Hearings and Review on February 23, 1999. By decision dated May 6, 1999, an OWCP hearing representative affirmed the July 6, 1998 decision. The hearing representative found that appellant had failed to establish a compensable factor of employment.

Appellant continued to pursue his claim and continued to submit additional evidence. By decision dated December 12, 2018, OWCP denied his request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

Appellant appealed the December 12, 2018 decision to the Board. By decision dated February 5, 2020, the Board affirmed OWCP's decision dated December 12, 2018.⁴ The Board found that OWCP properly denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error in OWCP's May 6, 1999 decision.

Appellant continued to pursue his claim and submit additional evidence.

On May 12 and December 8, 2022 OWCP received appellant's letters dated May 9 and December 5, 2022, respectively, requesting reconsideration. Appellant submitted arguments as to why he believed that his claim should be reopened. In his May 9, 2022 letter, he contended that the employing establishment did not attend the hearing held before the Branch of Hearings and Review. In his December 8, 2022 letter, appellant argued that his claim should remain in a pending status until an employing establishment representative attended a hearing before OWCP's Branch of Hearings and Review.

² Docket No. 19-0497 (issued February 5, 2020); *Order Remanding Case*, Docket No. 23-0966 (issued November 29, 2023).

³ The record is unclear as to when appellant stopped work again.

⁴ Docket No. 19-0497 (issued February 5, 2020).

By decision dated January 24, 2023, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On June 30, 2023 appellant appealed to the Board. By order remanding case, dated November 29, 2023, the Board set aside OWCP's January 24, 2023 decision, finding that OWCP had summarily denied his request for reconsideration without complying with the review requirements of FECA and its implementing regulations. The Board noted that OWCP had not addressed the argument appellant presented in his letters requesting reconsideration. The Board remanded the case for findings of fact and a statement of reasons, to be followed by an appropriate decision on his request for reconsideration.⁵

By decision dated March 6, 2024, OWCP denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error. It reviewed his requests for reconsideration and found that the presence of an employing establishment official at a Branch of Hearings and Review hearing was not relevant to the issue of whether his had established that a compensable factor of employment occurred on April 13, 1998.

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 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

⁵ See *Order Remanding Case*, Docket No. 23-0966 (issued November 29, 2023).

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).

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

⁹ *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).

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).

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

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁶ The claimant must present evidence, which on its face shows that OWCP made an error.¹⁷ 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.¹⁸ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁹

ANALYSIS

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

OWCP's regulations establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision. The most recent merit decision on the issue of whether appellant established a compensable employment factor was an OWCP's hearing representative's May 6, 1999 decision. As OWCP received appellant's requests for reconsideration on May 12 and December 8, 2022, more than one year after the May 6, 1999 merit decision, the Board finds that the requests were untimely filed.²⁰ Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in its May 6, 1999 decision.

In his request for reconsideration, appellant argued that his case was in a pending status or alternatively that he was entitled to a new hearing before OWCP's Branch of Hearings and Review

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

¹⁷ *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

¹⁸ *Id.*

¹⁹ *W.R.*, Docket No. 24-0244 (issued May 22, 2024); *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

²⁰ 20 C.F.R. § 10.607(a).

because a representative from the employing establishment did not attend the hearing held on February 23, 1999. However, whether or not a representative from the employing establishment is present at a hearing is not relevant to the issue of whether appellant met his burden of proof to establish a compensable factor of employment in the performance of duty. The Board has held that the submission of evidence or argument which does not address the issue involved does not constitute a basis for reopening a case.²¹ Appellant's arguments are insufficient to demonstrate clear evidence of error in the May 6, 1999 decision.

The term clear evidence of error is intended to represent a difficult standard. Appellant has not otherwise submitted evidence sufficient to raise a substantial question as to the correctness of OWCP's May 6, 1999 decision. Therefore, OWCP properly denied appellant's request for reconsideration.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²¹ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).