

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

_____)	
Z.M., Appellant)	
)	
and)	Docket No. 24-0547
)	Issued: July 8, 2024
U.S. POSTAL SERVICE, MILLBRAE POST)	
OFFICE, Millbrae, CA, Employer)	
_____)	

Appearances:
Eddie Reyna, for the appellant¹
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 28, 2024 appellant, through her representative, filed a timely appeal from an October 31, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated October 25, 2022, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly determined that appellant's request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On June 16, 2021 appellant, then a 58-year-old sales, service, and distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on May 24, 2021 she sustained emotional/stress-related conditions while in the performance of duty. She explained that she suffered severe emotional distress, mental anguish, and acute anxiety attack causing her incapacitation at work as a result of verbal abuse, hostility, and intimidating conduct by her supervisor, T.T., who shouted at her. Appellant did not stop work.

In support of her claim, appellant submitted a June 11, 2021 medical report, wherein Dr. Chin-Po Paul Yang, a Board-certified psychiatrist reported that appellant was under his care for emotional and psychological conditions that arose from a traumatic encounter with her manager on May 24, 2021. Dr. Yang recommended that she work in a hostility-free environment, which was essential to her recovery.

In a June 11, 2021 letter, the employing establishment challenged appellant's claims of verbal abuse, hostility, and intimidation from her supervisor T.T. while in the performance of duty on May 24, 2021. It noted that following its investigation, it found no justification that T.T. engaged in the alleged conduct as she provided the same instructions to appellant as she did to the other employees working that morning.

Accompanying the employing establishment's challenge letter was a June 14, 2020 statement from T.T., who reported that appellant was providing instructions to a trainee at that time and she only wanted the trainee to receive instructions from management. T.T. noted reiterating the instructions to another clerk. She reported that she was not rude and did not yell at the clerks and simply wanted the trainee to have the correct instructions from management. Also accompanying the challenge letter were June 14 and 16, 2021 statements from J.G., a coworker, noting that other employees were also provided instructions for the training on May 24, 2021.

In a June 23, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. By separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding her traumatic injury claim, including comments regarding the accuracy of appellant's statement. It afforded both parties 30 days to respond.

In support of her claim, appellant submitted a May 24, 2021 statement, wherein she reported that T.T. aggressively interrupted her on that date while she was helping a customer, coerced her into signing a form she did not have an opportunity to review, refused to answer her questions, and spoke to her in a hostile and derogatory manner. She reported that T.T. continued to ask her if she was going to sign the form, while also threatening to mark her absent without leave (AWOL) if she did not. Appellant alleged that T.T.'s actions caused her to have a panic

attack. She asked T.T. for a copy of the form who refused as she grabbed the paper from her hand. Appellant reported feeling frightened from T.T.'s aggressiveness and hostility towards her causing her to report the incident to J.G.

In a statement dated May 24, 2021, F.O., a coworker, reported that he could hear T.T. raising her voice at appellant near the window lobby area but could not hear the whole conversation. He reported that he did hear T.T. say in a loud voice, "I don't have time right now!"

In reports dated June 11, July 7, and July 22, 2021, Dr. Yang reported that appellant had a history of post-traumatic stress disorder. He reported that he evaluated her on June 11, 2021 for an exacerbation of symptoms following a May 24, 2021 employment incident when her supervisor yelled at her unprovoked, causing her to become so frightened she signed documents without looking at them. Appellant reported that her supervisor then grabbed the signed documents forcefully, causing her to experience heightened anxiety, an intensive recollection of the traumatic scene, and insomnia with frequent nightmares, which resulted in her diagnosis of post-traumatic stress disorder. Dr. Yang opined that appellant experienced an aggravation of her preexisting post-traumatic stress disorder after a traumatic encounter with her supervisor who yelled at her at work on May 24, 2021, resulting in a worsening of symptoms.

By decision dated July 30, 2021, OWCP denied appellant's emotional condition claim, finding that she had not established a compensable employment factor. Therefore, it concluded that the requirements had not been met to establish an emotional condition in the performance of duty.

On July 30, 2022 appellant, through her representative, requested reconsideration of the OWCP decision.

In support of her reconsideration request, appellant submitted narrative statements dated October 18, 2021 and July 29, 2022 describing the hostile circumstances surrounding the May 24, 2021 employment incident with T.T., which was witnessed by other coworkers. She also reported that prior complaints regarding T.T.'s harassing behavior had also been made on January 9, 2019 by her coworker W.N.

In support of her assertions, appellant provided employing establishment documents from 2007 and 2008 discussing zero tolerance in the workplace; a January 9, 2019 e-mail from coworker W.N. discussing her letter of resignation due to T.T.'s harassing behavior; a May 3, 2019 employing establishment settlement agreement form indicating that T.T. agreed to conduct herself in a professional manner; a document regarding T.T.'s 2019 anger management course; and a July 27, 2019 employing establishment settlement agreement which provided for enforcement of a zero tolerance policy and a formal apology.

In a June 19, 2021 statement, I.V., a coworker, reported that on May 24, 2021 she could hear T.T. yelling at appellant, which she informed J.G. She reported that she could only hear their voices but could not catch the conversation because she was farther away helping her customers at the retail window.

By decision dated October 25, 2022, OWCP denied modification of the July 30, 2021 decision.

On October 26, 2023 appellant, through her representative, requested reconsideration of OWCP's October 25, 2022 decision. In support thereof, she submitted an October 15, 2021 statement from T.T., indicating that she did not yell at appellant, but could confirm that she was harassed and intimidated by other coworkers, which went on for some time, including on that date.

By decision dated October 31, 2023, 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.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 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.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.⁹ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.¹⁰ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹¹ It is not enough merely to show that the evidence could be construed so

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

⁴ 20 C.F.R. § 10.607(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *J.D.*, Docket No. 19-1836 (issued April 6, 2020); *Leone N. Travis*, 43 ECAB 227 (1999).

¹¹ *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

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.¹²

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹³ The claimant must present evidence, which on its face shows that OWCP made an error.¹⁴ 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.¹⁵ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁶

ANALYSIS

The Board finds that OWCP properly denied appellant's request of reconsideration, as it was untimely filed and failed to demonstrate clear evidence of error.¹⁷

The last merit decision was issued on October 25, 2022. As the most recent request for reconsideration was not received by OWCP until October 26, 2023, more than one year after the October 25, 2022 merit decision, pursuant to 20 C.F.R. § 10.607(a), the Board finds that the request for reconsideration was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in denying the claim.¹⁸

In support of her reconsideration request, appellant submitted an October 15, 2021 statement from T.T., who reported that during the period May 24, 2021, she did not yell at appellant but could confirm that she was harassed and intimidated by other coworkers, which went on for some time, including on that date. However, as explained above, evidence which 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 merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁹ The Board finds that appellant's request for

¹² *T.N.*, Docket No. 18-1613 (issued April 29, 2020).

¹³ *See supra* note 5 at Chapter 2.1602.5a (September 2020); *see also J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹⁴ *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

¹⁵ *Id.*

¹⁶ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹⁷ *R.T.*, Docket No. 20-0298 (issued August 6, 2020).

¹⁸ 20 C.F.R. § 10.607(b); *S.C.*, Docket No. 20-1537 (issued April 14, 2021); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *see Debra McDavid*, 57 ECAB 149 (2005).

¹⁹ *U.C.*, Docket No. 19-1753 (issued June 10, 2020).

reconsideration did not show on its face that OWCP committed an error in denying her emotional condition claim.²⁰ Thus, the evidence is insufficient to demonstrate clear evidence of error.²¹

Accordingly, the Board finds that OWCP properly denied appellant's request for reconsideration, as it was untimely filed and failed to demonstrate clear evidence of error.²²

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2024
Washington, DC

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

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

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

²⁰ *S.C.*, Docket No. 19-1424 (issued September 15, 2020).

²¹ *J.J.*, Docket No. 23-0155 (issued October 5, 2023).

²² *J.B.*, Docket No. 20-0630 (issued April 21, 2021).