United States Department of Labor
Employees' Compensation Appeals Board

S.M., Appellant	)	
and	)	**Docket Nos. 24-0610 & 24-0611**
	)	**Issued: July 1, 2024**
U.S. POSTAL SERVICE, BULK MAIL CENTER, Forest Park, 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
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On May 7, 2024 appellant filed a timely appeal from an April 9, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned that appeal Docket No. 24-0610. Also, on May 7, 2024, appellant filed a timely appeal from an April 16, 2024 nonmerit decision of OWCP. The Clerk of the Appellate Boards assigned that appeal Docket No. 24-0611. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly denied appellant's February 20, 2024 request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error; and (2) whether appellant has met his burden of proof to establish a recurrence of the need for medical treatment commencing February 28, 1989 causally related to his accepted employment injury.

[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 decisions and orders are incorporated herein by reference. The relevant facts are as follows.

On September 30, 1987 appellant, then a 28-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he sustained left carpal tunnel syndrome causally related to factors of his federal employment. OWCP accepted the claim for left carpal tunnel syndrome. Appellant stopped work on October 9, 1987.

On July 6, 1988 the employing establishment offered appellant a position as a modified custodian. The position required intermittent standing and walking, lifting no more than 10 pounds, and occasional reaching above the shoulder level.

On November 16, 1988 Dr. James D. Schlenker, an attending Board-certified surgeon, found that appellant could return to the described duties of the modified custodian position, full-time, effective October 31, 1988. Appellant returned to work on November 4, 1988 as a modified custodian.

In a report dated February 24, 1989, Dr. Schlenker discussed appellant's history of carpal tunnel syndrome treated with a left carpal tunnel release. He related that appellant had some loss of strength in his left hand. In an addendum, Dr. Schlenker noted that electrodiagnostic testing had yielded findings within normal limits for each nerve on both sides. He opined that appellant had "recovered completely from his carpal tunnel syndrome on the left side."

On March 1, 1989 the employing establishment denied appellant's request for reassignment to a different work schedule.

Appellant stopped work on March 16, 1989 and informed the employing establishment that he would not return unless he was placed back on his original tour schedule, and preferably in his craft. On September 14, 1989 the employing establishment removed him from employment effective June 9, 1989 for unauthorized absence since March 1989.

On February 17, 1991 Dr. Timothy Norton, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), advised that appellant could perform the modified position as set forth but that additional duties like washing sinks and toilets would require too much

[2] Docket No. 90-0321 (issued April 5, 1990); Docket No. 97-0670 (issued March 10, 1999); *Order Denying Petition for Reconsideration*, Docket No. 97-0670 (issued August 19, 1999); Docket No. 02-1032 (issued October 22, 2002); *Order Remanding Case*, Docket No. 02-1209 (issued October 28, 2002); Docket No. 04-0757 (issued May 2, 2005); Docket No. 09-0151 (issued October 21, 2009); *Order Denying Petition for Reconsideration*, Docket No. 09-0151 (issued April 13, 2010); Docket No. 10-2320 (issued July 19, 2011); *Order Denying Petition for Reconsideration*, Docket No. 10-2320 (issued January 25, 2012); Docket No. 12-0174 (issued July 25, 2012); *Order Remanding Case*, Docket No. 13-1383 (issued December 16, 2013); Docket No. 14-0759 (issued July 1, 2014); Docket No. 15-0426 (issued April 20, 2015); Docket No. 16-0270 (issued April 26, 2016); Docket No. 18-0075 (issued April 11, 2018); Docket No. 19-1961 (issued January 28, 2021); Docket No. 21-1232 (issued April 8, 2022); Docket No. 23-0908 (issued January 10, 2024).

repetitive movement. On May 2, 1991 the employing establishment advised that it had not assigned him additional duties, but only the duties provided in the July 6, 1988 offered position. It asserted that appellant had stopped work because he did not like his shift hours.

By decision dated July 6, 1992, OWCP denied appellant's claim for disability from work commencing March 16, 1989. It found that the employing establishment had provided him with work within his restrictions, and that he had stopped work for reasons unrelated to his employment injury.

Appellant requested reconsideration. By decisions dated August 15, 1994 and October 27, 1995, OWCP denied modification, finding that appellant had not established disability from work commencing March 16, 1989.

In a statement dated May 13, 1996, J.W., an employing establishment manager, advised that appellant had resumed modified employment on November 6, 1988, but had stopped work on March 16, 1989 and requested that he be placed back on his original duty tour and original craft. He noted that he was now contending that he stopped work due to his medical condition. J.W. asserted that appellant was not entitled to compensation based on his refusal or neglect of suitable employment.

By decision dated August 10, 1996, OWCP modified the October 27, 1995 decision to reflect that he had performed duties not specifically approved by his physician. It noted, however, that there was no evidence supporting that theses duties exceeded the restrictions set forth by Dr. Schlenker. OWCP found that the medical evidence of record was insufficient to establish that appellant was disabled from work commencing March 16, 1989.

Appellant requested reconsideration. By decision dated November 13, 1996, OWCP denied his request for reconsideration, pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By decision dated March 10, 1999, the Board affirmed the August 10 and November 13, 1996 OWCP decisions.[3] The Board determined that appellant had not established that he worked outside of his restrictions. The Board further found that the medical evidence failed to show that he was disabled from his limited-duty position beginning March 16, 1989.

Appellant subsequently submitted multiple requests for reconsideration. By decisions dated March 14 and November 29, 2001 and March 5, 2002, OWCP denied his requests for reconsideration, pursuant to 5 U.S.C. § 8128(a). Appellant appealed to the Board. By decision dated October 22, 2002, the Board affirmed OWCP's March 14 and November 29, 2001 and March 5, 2002 OWCP decisions.[4]

Appellant continued to request reconsideration. OWCP denied his requests, finding that they were untimely filed and failed to demonstrate clear evidence of error. Appellant appealed to

[3] Docket No. 97-670 (issued March 10, 1999).

[4] Docket No. 02-1032 (issued October 22, 2002).

the Board. By decisions dated May 2, 2005 through January 10, 2024, the Board affirmed OWCP's decisions denying his requests for reconsideration on the grounds that they were not timely and failed to demonstrate clear evidence of error.[5]

On February 11, 2024 appellant filed a notice of recurrence (Form CA-2a) alleging that on February 28, 1989 he sustained a recurrence of the need for medical treatment causally related to his accepted September 10, 1987 employment injury. He related that he worked with restrictions from November 5, 1988 through March 16, 1989, when he abandoned his position. Appellant asserted that he had performed work duties not cleared by his physician.

On February 20, 2024 appellant again requested reconsideration of the merits of his claim for disability from work commencing March 16, 1989. He advised that he was submitting a yearly wage schedule contract between the employing establishment and its employees for the period 1987 to 1990, which he maintained was sufficient to reopen his case for further merit review. Appellant asserted that OWCP erred in calculating his pay rate in its schedule award decision, arguing that his pay rate date should be March 16, 1989, the date he abandoned his limited-duty position. He further maintained that OWCP erred in failing to issue a loss of wage-earning capacity determination as part of its August 10, 1996 decision, and in failing to terminate his compensation due to the abandonment of suitable work. Appellant noted that OWCP had found that the issues in its August 10, 1996 decision were whether he performed duties not cleared by his physician, and whether these duties caused him to become totally disabled as of March 16, 1989. He argued that an additional issue was whether it could find that compensation was not payable without performing a suitable work termination under 5 U.S.C. § 8106(c). Appellant submitted a form with columns of numbers.

In a development letter dated February 26, 2024, OWCP informed appellant of the deficiencies of his recurrence claim. It advised him of the type of factual and medical evidence needed and afforded appellant 30 days to submit the necessary information.

In a February 24, 1989 report, Dr. Schlenker noted that appellant's left carpal tunnel syndrome had been treated with a release, and found no permanent loss of left-hand sensation and motion but some loss of strength that may improve with time. In an August 10, 1989 report, he indicated that repetitive work activities would aggravate appellant's condition. On September 13, 1990 Dr. Schlenker advised that appellant could perform modified work avoiding repetitive activities to prevent triggering his carpal tunnel symptoms. In a September 14, 1990 report, he diagnosed nonspecific synovitis involving the flexor tendons of both wrists aggravated by repetitive activities. Dr. Schlenker opined that appellant should avoid repetitive activities. In a report dated February 21, 1996, he advised that appellant had some residual symptoms of median neuropathy, but that it was unclear whether this represented a recurrence of his carpal tunnel

[5] Docket No. 04-757 (issued May 2, 2005); Docket No. 09-151 (issued October 21, 2009); Docket No. 10-2320 (issued July 19, 2011); Docket No. 12-714 (issued July 25, 2012). On January 25, 2010 the Board denied appellant's petition for reconsideration of its July 19, 2011 decision. *Order Denying Petition for Reconsideration*, Docket No. 10-2320 (issued January 25, 2012). Docket No. 14-0759 (issued July 1, 2014); Docket No. 15-0426 (issued April 20, 2015). The Board denied appellant's petition for reconsideration on October 27, 2015. *Order Denying Petition for Reconsideration*, Docket No. 15-0426 (issued October 27, 2015); Docket No. 16-0270 (issued April 26, 2016); Docket No. 18-0075 (issued April 11, 2018); Docket No. 19-1961 (issued January 28, 2021); Docket No. 21-1232 (issued April 8, 2022); Docket No. 23-0908 (issued January 10, 2024).

syndrome, and even if it was a recurrence, questioned whether it was caused by his work duties. Appellant also resubmitted an August 14, 2019 report from Dr. Salman Chaudri, an osteopath, finding that repetitive work duties would likely aggravate his condition.

By decision dated April 9, 2024, OWCP denied appellant's claim for a recurrence of the need for medical treatment, finding that the medical evidence of record was insufficient to establish a recurrence causally related to his September 19, 1987 employment injury.

By decision dated April 16, 2024, OWCP denied appellant's February 20, 2024 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT -- ISSUE 1

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.[6] OWCP's regulations[7] establish a one-year time limitation for requesting reconsideration which begins on the date of the original OWCP merit decision. A right to reconsideration within one-year also accompanies any subsequent merit decision on the issues.[8] 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. Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS).[9] Imposition of this one-year filing limitation does not constitute an abuse of discretion.[10]

When a request for reconsideration is untimely, OWCP undertakes a limited review to determine whether the request demonstrates clear evidence that OWCP's most recent merit decision was in error.[11] 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 for reconsideration demonstrates "clear evidence of error" on the part of

[6] 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).

[7] 20 C.F.R. § 10.607(a).

[8] *E.R.*, Docket No. 21-0423 (issued June 20, 2023); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert F. Stone*, 57 ECAB 292 (2005).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

[10] *S.S.*, Docket No. 23-0086 (issued May 26, 2023); *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).

[11] *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).

OWCP.[12] In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.[13]

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.[14] The evidence must be positive, precise, and explicit, and must manifest on its face that OWCP committed an error. 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. 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 error on the part of OWCP. [15]

OWCP procedures note that the term clear evidence of error is intended to represent a difficult standard. The claimant must present evidence which on its face demonstrates that OWCP made an error (for example, proof that a schedule award was miscalculated). 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.[16] The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.[17]

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly denied appellant's February 20, 2024 request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

OWCP's regulations[18] and procedures[19] establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.[20]

[12] *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also* 20 C.F.R. § 10.607(b); *supra* note 9 at Chapter 2.1602.5 (September 2020).

[13] *L.J.*, Docket No. 23-0282 (issued May 26, 2023); *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

[14] *S.C.*, Docket No. 18-0126 (issued May 14, 2016).

[15] *M.N.*, Docket No. 22-1150 (issued May 8, 2023); *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

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

[17] *G.B.*, Docket No. 19-1762 (issued March 10, 2020); *D.S.,* Docket No. 17-0407 (issued May 24, 2017); *Georg C. Vernon*, 54 ECAB 319 (2003).

[18] 20 C.F.R. § 10.607(a); *see J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Alberta Dukes*, 56 ECAB 247 (2005).

[19] *Supra* note 9 at Chapter 2.1602.4 (September 2020); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

[20] 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

The most recent merit decision on that issue was the Board's March 10, 1999 decision. As appellant's February 20, 2024 request for reconsideration was received more than one year after the March 10, 1999 Board decision, the Board finds that it was untimely filed. Consequently, he must demonstrate clear evidence of error by OWCP in denying his claim for wage-loss compensation beginning March 16, 1989.[21]

In support of his request for reconsideration, appellant submitted a document that he advised was the yearly wage schedule contract for the period 1987 to 1990 between the employing establishment and its employees. He also raised issues regarding his pay rate for schedule award purposes. Appellant additionally contended that OWCP erred in failing to issue a loss of wage-earning capacity determination. The relevant issue, however, is whether he met his burden of proof to establish that he was disabled from his limited-duty job beginning March 16, 1989. The evidence submitted and arguments raised are not relevant to the issue that was decided by OWCP, and are thus insufficient to demonstrate clear evidence of error in OWCP's August 10, 1996 decision.[22]

Appellant also asserted that OWCP, in its August 10, 1996 decision, erred in failing to apply the provisions of 5 U.S.C. § 8106(c), relevant to suitable work terminations. However, the relevant issue remains whether he has met his burden of proof to establish that he was disabled from his limited-duty job beginning March 16, 1989. The Board, in prior decisions, addressed appellant's contention that OWCP erred in failing to apply the provisions of section 8106(c) and found that was insufficient to establish clear evidence of error.

Appellant has not raised a substantial question as to the correctness of OWCP's decision or submitted any supporting medical evidence. Consequently, OWCP properly found that his request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT -- ISSUE 2

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.[23] An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.[24]

If a claim for recurrence of a medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report establishing causal relationship between the employee's current condition and the original injury in order to meet his

[21] *Id.* at § 10.607(b); *see M.W.*, Docket No. 17-0892 (issued May 21, 2018); *see S.M.*, Docket No. 16-0270 (issued April 26, 2016).

[22] *S.M.*, Docket No. 19-1961 (issued January 28, 2021).

[23] 20 C.F.R. § 10.5(y).

[24] *See S.P.,* Docket No. 19-0573 (issued May 6, 2021); *M.P.,* Docket No. 19-0161 (issued August 16, 2019); *E.R.,* Docket No. 18-0202 (issued June 5, 2018).

or her burden of proof.[25] To meet this burden the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.[26] Where no such rationale is present, medical evidence is of diminished probative value.[27]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish a recurrence of a medical condition commencing February 28, 1989 causally related to his accepted employment injury.

On November 4, 1988 appellant returned to work as a modified custodian. On February 24, 1989 Dr. Schlenker noted that appellant's left carpal tunnel syndrome had been treated with a left carpal tunnel release. On examination he found a normal sensory examination on the left with full range of motion and some loss of strength. Dr. Schlenker opined that diagnostic studies yielded normal findings of the nerves bilaterally. He found that appellant had completed recovered from his left carpal tunnel syndrome.

In support of his claim, appellant also submitted additional medical evidence from Dr. Schlenker dated 1989 to 1996. These reports from Dr. Schlenker primarily addressed his work capacity rather than the need for further medical treatment. On September 14, 1990 Dr. Schlenker diagnosed nonspecific synovitis of both wrists aggravated by repetitive activities. He did not, however, provide an opinion on whether appellant had a recurrent need for medical treatment causally related to the accepted September 10, 1987 employment injury.[28] Consequently, this evidence is insufficient to establish appellant's recurrence claim.

On February 21, 1996 Dr. Schlenker found residual medial neuropathy symptoms, but advised that it was unclear whether this was a recurrence of carpal tunnel syndrome or whether it was employment related. His finding that it was unclear whether appellant had sustained a recurrence of carpal tunnel syndrome is equivocal in nature. The Board has long held that medical opinions that are speculative or equivocal are of diminished probative value.[29] Thus, this evidence is insufficient to establish appellant's recurrence claim.

In an August 14, 2019 report, Dr. Chaudri found that repetitive work duties would aggravate his condition. This evidence, however, fails to address the relevant issue of whether

[25] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4b (June 2013); *see also J.M.,* Docket No. 09-2041 (issued May 6, 2010).

[26] *T.B.,* Docket No. 18-0672 (issued November 2, 2018); *O.H.,* Docket No. 15-0778 (issued June 25, 2015).

[27] *W.B.*, Docket No. 22-0985 (issued March 27, 2023); *A.M.,* Docket No. 22-0322 (issued November 17, 2022); *R.C.,* Docket No. 20-1321 (issued July 7, 2021); *R.S.,* Docket No. 19-1774 (issued April 3, 2020).

[28] *See J.S.*, Docket No. 23-0957 (issued March 15, 2024); *I.P.*, Docket No. 24-0121 (issued March 11, 2024).

[29] *See R.B.*, Docket No. 23-0395 (issued October 2, 2023); *M.D.*, Docket No. 21-0080 (issued August 16, 2022); *R.B.*, Docket No. 19-0204 (issued September 6, 2019).

appellant sustained a recurrence of the need for medical treatment, and thus is insufficient to establish the recurrence claim.[30]

As the medical evidence of record is insufficient to establish that appellant required further medical treatment causally related to his accepted employment injury commencing February 28, 1989, the Board finds that he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly denied appellant's February 20, 2024 request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error. The Board further finds that appellant has not met his burden of proof to establish a recurrence of the need for medical treatment commencing February 28, 1989 causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 9 and 16, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 1, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

[30] *Supra* note 28.