

FACTUAL HISTORY

On December 2, 2019 appellant, then a 51-year-old mail processing and distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she developed right shoulder conditions, including rotator cuff and labral tears, due to her repetitive daily duties. She noted that she first became aware of her conditions on July 28, 2019 and realized their relation to her federal employment on October 14, 2019. OWCP accepted the claim for incomplete rotator cuff tear or rupture of right shoulder, and superior glenoid labrum lesion of right shoulder. Appellant stopped work on August 24, 2020 and underwent right shoulder rotator cuff repair of the supraspinatus, biceps tenodesis, subacromial decompression, distal clavicle excision and extensive intra-articular debridement. OWCP paid her appropriate wage-loss compensation on the supplemental rolls effective August 24, 2020 and on the periodic rolls effective October 11, 2020 until September 11, 2021.

In a May 4, 2022 letter, OWCP requested that appellant's physician Dr. Richard Cunningham, a Board-certified osteopath, review the second opinion examination reports of Dr. Arnold Smith, a Board-certified orthopedic surgeon, dated October 22, 2021 with addenda dated December 16, 2021 and February 22, 2022 and advise as to whether he agreed that appellant be referred to an upper limb specialist to determine whether she was a candidate for total shoulder replacement and provide an opinion as to her work restrictions.

In a June 8, 2022 letter, Dr. Cunningham indicated his concurrence with the recommendations of OWCP's second opinion examiner. He advised that appellant's condition was long term, and that she would follow up with an upper limb specialist for evaluation. In a March 21, 2022 report, Dr. Cunningham indicated his clinical findings and opined that the diagnosed partial thickness rotator cuff tear right shoulder and injury to glenoid labrum right were improving with treatment, and that appellant was able to work very light stationary duty with limitations. In a June 10, 2022 work capacity evaluation (Form OWCP-5c), he opined that appellant was totally disabled from work.

On June 21, 2022 appellant filed a claim for wage-loss compensation (Form CA-7) for total disability from work commencing March 12, 2022 causally related to her accepted July 28, 2019 employment injury.

In a July 5, 2022 development letter, OWCP informed appellant of the deficiencies in the factual and medical evidence to support that she sustained any disability or material worsening of her accepted work-related conditions, without intervening injury, during the entire period claimed. It advised her of the definition of a recurrence of disability and the type of factual and medical evidence needed to be entitled to additional medical treatment and compensation for wage loss because of a recurrent disability. OWCP provided a questionnaire for appellant's completion and afforded her 30 days to submit the necessary evidence. The development letter was addressed to appellant at her Tallahassee, Florida address. No further evidence was received.

By decision dated August 18, 2022, OWCP denied appellant's recurrence claim. It found that the medical evidence of record was insufficient to establish that she was disabled from work due to a material change or worsening of her accepted work-related conditions. The decision was addressed to appellant at her last known address of record in Tallahassee, Florida.

On January 9, 2024 appellant requested reconsideration of OWCP's August 18, 2022 decision. On the appeal request form she alleged that she "never received the original paperwork dated August 18, 2022" and the "CA-7 denial was the first time I heard about the paperwork that I never received." The address appellant provided on the appeal request form was the same Tallahassee, Florida address which the August 18, 2022 decision was sent. No additional factual or medical evidence was submitted.

By decision dated January 22, 2024, 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, *i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS).⁵ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁶

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.⁷ 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 OWCP.⁸ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.⁹

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹⁰ 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

³ 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).

⁴ 20 C.F.R. § 10.607(a).

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

⁶ *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).

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* 20 C.F.R. § 10.607(b); *supra* note 5 at Chapter 2.1602.5 (September 2020).

⁹ *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁰ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 5 at Chapter 2.1602.5(a) (September 2020).

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.¹¹

OWCP's 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.¹² The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹³

ANALYSIS

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

As explained above, a request for reconsideration must be received within one year of the last merit decision.¹⁴ As appellant's request for reconsideration was received on January 9, 2024, more than one year after the issuance of OWCP's August 18, 2022 merit decision, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in its August 18, 2022 decision.¹⁵

The Board further finds that appellant's reconsideration request failed to demonstrate clear evidence of error on the part of OWCP in its last merit decision. Appellant alleged on reconsideration that she never received the denial decision or development letter from OWCP. However, the record reflects that both the July 5, 2022 development letter and the August 18, 2022 notice of decision were mailed to the last known address of record which were not returned as undeliverable.¹⁶ The Board has held that, in the absence of evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is known as the mailbox rule.¹⁷ Accordingly, without evidence to the contrary, both the July 5, 2022 development letter and the August 18, 2022 notice of decision are presumed to have arrived at appellant's mailing address.

Appellant failed to provide any argument for why OWCP's decision was improperly decided, and she offered no further evidence for consideration with her untimely reconsideration

¹¹ *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

¹² *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 5 at Chapter 2.1602.5(a) (September 2020).

¹³ *See G.B.*, Docket No. 21-0800 (issued January 11, 2024); *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹⁴ 20 C.F.R. § 10.607(a).

¹⁵ *Id.* at § 10.607(b); *A.S.*, Docket No. 19-1689 (issued February 21, 2020); *S.M.*, Docket No. 16-0270 (issued April 26, 2016).

¹⁶ *A.S.*, *id.*; *K.F.*, Docket No. 18-0839 (issued November 19, 2018).

¹⁷ *See A.J.*, Docket No. 18-0830 (issued January 10, 2019); *see also R.M.*, Docket No. 14-1512 (issued October 15, 2014); *V.M.*, Docket No. 06-0403 (issued December 15, 2006).

request. Accordingly, the Board finds that appellant's request for reconsideration does not show on its face that OWCP committed error in its August 18, 2022 decision.

For these reasons, OWCP properly determined that appellant's request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 30, 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