

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

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J.C., Appellant)	
)	
and)	Docket No. 24-0831
)	Issued: October 18, 2024
U.S. POSTAL SERVICE, BEAUMONT SOUTH)	
END POST OFFICE, Beaumont, TX, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On August 12, 2024 appellant filed a timely appeal from a May 31, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated February 17, 2023 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.

FACTUAL HISTORY

On October 3, 2021 appellant, then a 53-year-old city carrier, filed an occupational disease claim alleging that she developed a sharp pain underneath her heel causing her to walk

¹ 5 U.S.C. § 8101 *et seq.*

on her toes due to factors of her federal employment, including walking for more than eight hours a day on uneven pavement. She did not stop work.

In an October 15, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Appellant provided a duty status report (Form CA-17) diagnosing left plantar fasciitis.

By decision dated November 16, 2021, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a medical condition in connection with the accepted factors of her federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. On December 10, 2021 appellant underwent a magnetic resonance imaging (MRI) scan of her left foot which demonstrated interstitial partial tears and moderate tendinosis of the distal Achilles tendon and a dorsal calcaneal spur. On December 16, 2021 Dr. Mical Samuelson Duvall, Board-certified anesthesiologist, completed a duty status report diagnosing left Achilles tendon injury.

On January 15, 2022 appellant requested reconsideration. She provided an October 21, 2021 Form CA-17 from Dr. Duvall diagnosing left plantar fasciitis. On January 12, 2022 appellant again diagnosed left Achilles tendon injury.

By decision dated April 14, 2022, OWCP modified the November 16, 2021 decision to reflect that appellant had established the medical component of fact of injury. However, the claim remained denied, because the medical evidence of record was insufficient to establish a medical condition causally related to the accepted factors of her federal employment.

On February 15, 2023 appellant requested reconsideration and submitted additional evidence.

In a January 13, 2023 note, Dr. Duvall diagnosed displaced avulsion fracture of the tuberosity of the left calcaneus, injury of the left Achilles tendon, arthritis of the left ankle and foot, ankle joint pain, and fibromatosis with contracture of the plantar fascia.

By decision dated February 17, 2023, OWCP denied modification.

On February 22, 2023 appellant requested reconsideration. She resubmitted Dr. Duvall's October 21, 2021 Form CA-17 and January 13, 2022 treatment note. Appellant also provided a copy of the April 14, 2022 decision.

In an April 23, 2024 report, Dr. Ugochi Azuike, an osteopath, related that on October 1, 2021 as she was walking on her route, appellant experienced a sudden, sharp, pain in her left Achilles tendon, ankle and foot. Following physical examination, she diagnosed left Achilles tendon tear, left ankle swelling, left ankle instability, left ankle calcaneal spur, trochanteric bursitis left hip, and intervertebral disc displacement, lumbar region. Dr. Azuike opined that

with a reasonable degree of medical certainty, the injuries that appellant sustained were the direct result of the mechanism of injury. She explained that appellant's trip and fall resulted in a sudden motion and stretch of the left foot and twisting of the left ankle which caused tearing, inflammation, swelling, and damage to the left ankle muscle, tendons, and ligaments. Dr. Azuike further related that the chronic Achilles tear and instability altered her gait leading to increased stress on the left hip, sacroiliac joint, and low back. She determined that appellant could return to work with restrictions.

On May 29, 2024 appellant again requested reconsideration. She provided a May 24, 2024 left ankle MRI scan.

By decision dated May 31, 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.² OWCP's regulations³ 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.⁴ 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)).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 Its 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

² 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).

³ 20 C.F.R. § 10.607(a).

⁴ *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).

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

⁶ *S.S.*, Docket No. 23-0086 (issued May 26, 2023); *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).

claimant's request for reconsideration demonstrates "clear evidence of error" on the part of OWCP.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. 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.¹⁰

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹¹ The claimant must present evidence which on its face demonstrates that OWCP made an error. 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. The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹²

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 on February 22, 2023. As this was within one year of the February 17, 2023 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).¹³ Since it erroneously reviewed the evidence submitted in support of appellant's reconsideration request

⁸ *B.J.*, Docket No. 24-0430 (issued June 5, 2024); *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); *supra* note 6 at Chapter 2.1602.5 (September 2020).

⁹ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 6 at Chapter 2.1602.5a (September 2020).

¹⁰ *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).

¹¹ *G.G.*, *supra* note 7; *see also* 20 C.F.R. § 10.607(b); *supra* note 6 at Chapter 2.1602.5 (September 2020).

¹² *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

¹³ 20 C.F.R. § 10.606(b)(3) of OWCP's regulations provide that a request for 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.

under the more stringent clear evidence of error standard, the Board shall remand the case for review of this evidence under the proper standard of review for timely reconsideration requests, to be followed by an appropriate decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2024 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: October 18, 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