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K.S., Appellant)	
)	
and)	Docket No. 25-0142
)	Issued: January 27, 2025
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS AND BORDER PROTECTION,)	
Imperial, CA, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On November 26, 2024 appellant filed a timely appeal from an October 1, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated June 21, 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.

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

On August 2, 2022 appellant, then a 37-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on July 27, 2002 she sustained right shoulder and arm injuries when her arm was jerked abruptly as she lifted a deceased individual in a body bag while in the performance of duty. She did not stop work.

OWCP received an authorization for examination and/or treatment (Form CA-16) completed and signed by R.R. on August 2, 2022.

In an August 8, 2022 report, Dr. David J. Chao, an orthopedic surgeon, recounted appellant's history of injury and provided examination findings. He diagnosed right shoulder joint pain.

An August 10, 2022 magnetic resonance imaging (MRI) scan demonstrated no full thickness or partial tear and intact all four rotator cuff tendons.

Dr. Chao, in progress reports dated August 15, 22, and December 30, 2022, and January 11, 2023, again recounted appellant's history of injury and diagnosed right shoulder joint pain, right shoulder acromioclavicular joint osteoarthritis and right rotator cuff tendon inflammation.

In a January 18, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional evidence needed and afforded her 30 days to respond.

OWCP subsequently received additional medical evidence including progress reports dated January 13 and February 15, 2023 wherein Dr. Chao provided appellant's physical examination findings and diagnosed right shoulder joint pain, right shoulder acromioclavicular joint osteoarthritis and right rotator cuff tendon inflammation.

Dr. Chao, in a March 3, 2023 attending physician's report (Form CA-20), noted a July 7, 2022 injury date and diagnosed rotator cuff tendon inflammation. He checked a box marked "yes" to the question of whether the diagnosed condition was caused or aggravated by the accepted employment incident.

By decision dated March 14, 2023, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that the diagnosed right shoulder osteoarthritis was causally related to the accepted July 27, 2022 employment incident.

On April 12, 2023, appellant requested reconsideration. She submitted a narrative statement explaining the circumstances surrounding her July 27, 2022 employment incident.

By decision dated June 21, 2023, OWCP denied modification of the March 14, 2023 decision.

In a December 20, 2023, amended report, Dr. Chao related appellant's history of injury on July 27, 2022; the dates appellant was examined; and physical examination findings of right

shoulder impingement, loss of motion and strength, and biceps symptoms. Dr. Chao noted that appellant did not have any symptoms prior to the July 27, 2022 work incident and diagnosed partial rotator cuff tear and acute biceps long head partial tear, which he attributed to the July 27, 2022 employment incident.

In a December 27, 2023 amended report, Margaret Downing, a nurse practitioner explained that appellant's rotator cuff tear and bicep injury occurred when she fell while assisting in lifting a deceased individual. She concluded that there was "a concrete causal relationship between the lifting of the patient and fall and the rotator cuff tear and bicep injury."

On August 28, 2024, OWCP also received a report, which was unsigned, detailing plans of treatment, diagnoses, and providers covering the period August 8, 2022 through February 15, 2023.

On September 13, 2024, appellant requested reconsideration. She noted the history of her case and asserted that there had been a misdiagnosis of her injury. Appellant also related that her physician's office manager failed to upload documentation supporting her claim.

By decision dated October 1, 2024, OWCP denied appellant's September 13, 2024 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

² 5 U.S.C. § 8128(a); *T.V.*, Docket Nos. 24-0914 & 25-0004 (issued November 26, 2024); *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 *T.V.*, *supra* note 3; *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 *T.V.*, *supra* note 3; *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).

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 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.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 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 It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. Even 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.¹⁴ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁵

ANALYSIS

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.

⁷ See 20 C.F.R. § 10.607(b); *T.V., id.*; *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

⁸ *T.V., id.*; *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 5 at Chapter 2.1602.5 (September 2020).

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).

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

¹³ *Supra* note 6.

¹⁴ *Id.*

¹⁵ *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).

OWCP's regulations¹⁶ and procedures¹⁷ 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.¹⁸ The last OWCP merit decision was issued on June 21, 2023. As appellant's request for reconsideration was not received by OWCP until September 13, 2024, more than one year after the June 21, 2023 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.¹⁹

The Board further finds that appellant failed to submit the type of positive, precise, and explicit evidence which manifests on its face that OWCP committed an error in its June 21, 2023 merit decision.²⁰

On reconsideration, appellant alleged that her injury had been misdiagnosed, and that her physician's office failed to upload supporting documentation. However, the underlying issue of the case is whether appellant provided sufficient medical evidence to establish that the diagnosed right shoulder conditions were causally related to the accepted July 27, 2022 employment incident. As this issue is medical in nature, it can only be resolved through the submission of probative medical evidence.²¹ Therefore, appellant's arguments on reconsideration are insufficient to raise a substantial question concerning the correctness of OWCP's last merit decision of June 21, 2023. Thus, the evidence is insufficient to demonstrate clear evidence of error in the denial of appellant's claim.²²

OWCP also received a December 20, 2023 amended report, wherein Dr. Chao expanded his work-related diagnoses to include partial rotator cuff tear and acute biceps long head partial tear. Additionally, OWCP also received a December 27, 2023 amended report from Ms. Downing and an unsigned report. The Board notes that clear evidence of error is intended to represent a

¹⁶ 20 C.F.R. § 10.607(a); *see F.N.*, Docket No. 18-1543 (issued March 6, 2019); *Alberta Dukes*, 56 ECAB 247 (2005).

¹⁷ *Supra* note 5 at Chapter 2.1602.4 (February 2016); *see L.A.*, Docket No. 19-0471 (issued October 29, 2019); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

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

¹⁹ 20 C.F.R. § 10.607(b); *A.G.*, Docket No. 24-0868 (issued October 21, 2024); *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).

²⁰ *D.M.*, Docket No. 22-1152 (issued March 28, 2023); *see G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

²¹ *See E.W.*, Docket No. 24-0714 (issued August 30, 2024); *W.M.*, Docket No. 18-0565 (issued August 14, 2018); *S.J.*, Docket No. 17-1214 (issued April 16, 2018); *George C. Vernon*, 54 ECAB 319 (2003).

²² *W.R.*, Docket No. 24-0244 (issued May 22, 2024); *B.C.*, Docket No. 24-0022 (issued April 25, 2024); *J.J.*, Docket No. 23-0155 (issued October 5, 2023).

difficult standard.²³ Even 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.²⁴ It is merely not enough to establish that the evidence could be construed so as to produce a contrary conclusion.²⁵

As noted, evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.²⁶ The Board finds that the evidence submitted with appellant's untimely request for reconsideration fails to demonstrate clear evidence of error.

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.²⁷

CONCLUSION

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.²⁸

²³ See *supra* note 6 at Chapter 2.1602.5a (September 2020); see also *E.R.*, Docket No. 24-0681 (issued July 29, 2024); see also *K.W.*, Docket No. 19-1808 (issued April 2, 2020); *J.S.*, Docket No. 16-1240 (issued December 1, 2016).

²⁴ *Id.*

²⁵ *Id.*

²⁶ 20 C.F.R. § 10.607(a); *J.M.*, Docket No. 23-0603 (issued September 27, 2023); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

²⁷ *J.M.*, Docket No. (issued September 27, 2023); *C.M.*, Docket No. 23-0958 (issued May 10, 2024); *J.B.*, Docket No. 20-0630 (issued April 21, 2021).

²⁸ The Board notes that the employing establishment executed a Form CA-16 on August 2, 2022. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *S.G.*, Docket No. 23-0552 (issued August 28, 2023); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the October 1, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2025
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