

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

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S.D., Appellant )

and )

U.S. POSTAL SERVICE, MERRIFIELD POST )  
OFFICE, Merrifield, VA, Employer )  
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**Docket No. 23-0626**  
**Issued: August 24, 2023**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On March 22, 2023 appellant filed a timely appeal from a January 20, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated February 10, 2020, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the January 20, 2023 decision, the Board received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On January 6, 2020 appellant, then a 20-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on December 26, 2019 he sustained muscle soreness in his right knee and neck when his vehicle collided with a truck and flipped over while in the performance of duty. The employing establishment acknowledged on the claim form that he was in the performance of duty at the time of the alleged incident. Appellant stopped work on December 26, 2019.

An unsigned December 26, 2019 patient visit information form indicated that appellant received treatment on that date by Dr. William Barker, Board-certified in emergency medicine, following a motor vehicle accident (MVA) with no apparent injury. An unsigned work release form indicated that he could resume work on December 30, 2019.

In a development letter dated January 7, 2020, OWCP advised appellant of the factual and medical information required to establish his claim. In a separate letter of even date, it requested further information from the employing establishment regarding the circumstances surrounding the motor vehicle accident. OWCP afforded both parties 30 days to submit the requested information.

Subsequently, OWCP received the first page of an authorization for examination and/or treatment (Form CA-16) dated December 27, 2019 from the employing establishment authorizing Fauquier Hospital to provide office and/or hospital treatment as necessary for appellant's December 26, 2019 injury.

A December 26, 2019 hospital report indicated that an ambulance transported appellant to the hospital on that date following an MVA with entrapment. In a report of even date, Dr. Barker related that appellant was a belted driver "involved in a semi head on collision, with subsequent rollover of his vehicle." He had no complaints of pain or a specific injury. Appellant related that he may have fallen asleep at the wheel.

A computerized tomography (CT) scan of appellant's head and cervical spine obtained on December 26, 2019 revealed no acute findings.

An unsigned December 26, 2019 accident investigation worksheet from the employing establishment indicated that the police had charged appellant with reckless driving/failure to maintain control of his vehicle.

Appellant returned to his usual employment on December 30, 2019 without restrictions.

By decision dated February 10, 2020, OWCP accepted that the December 26, 2019 employment incident occurred in the performance of duty as alleged. However, it denied appellant's claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted December 26, 2019 employment incident. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

On December 16, 2022 appellant requested reconsideration.<sup>3</sup> In a statement dated December 7, 2022, he related that OWCP had paid two of his December 26, 2019 hospital bills, but that a third bill arising from his trip to the hospital on that date had not been paid. Appellant related that he was unaware of the bill until he reviewed his credit report.

By decision dated January 20, 2023, OWCP denied appellant's request for reconsideration as it was untimely 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.<sup>4</sup> 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.<sup>5</sup> Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).<sup>6</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.<sup>10</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>11</sup> 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

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<sup>3</sup> On October 14, 2022 appellant filed a notice of recurrence (Form CA-2a) of the need for medical treatment at an unspecified date. On November 14, 2022 OWCP informed him that it could not consider his Form CA-2a as it had denied his claim, and instructed him to follow his appeal rights.

<sup>4</sup> 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).

<sup>5</sup> 20 C.F.R. § 10.607(a).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

<sup>7</sup> *D.M.*, Docket No. 22-1152 (issued March 28, 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).

<sup>8</sup> *See* 20 C.F.R. § 10.607(b); *R.S.*, Docket No. 19-0180 (issued December 5, 2019); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

<sup>9</sup> *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 6 at Chapter 2.1602.5 (September 2020).

<sup>10</sup> *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>11</sup> *J.M.*, Docket No. 22-0630 (issued February 10, 2023); *S.C.*, Docket No. 18-0126 (issued May 14, 2016).

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. To demonstrate clear evidence of error, the evidence submitted must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.<sup>12</sup>

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.<sup>13</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>14</sup>

### ANALYSIS

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

OWCP received appellant's request for reconsideration on December 7, 2022, more than one year after the last merit decision dated February 10, 2020. Appellant's request was, therefore, untimely filed. Consequently, he must demonstrate clear evidence of error.<sup>15</sup>

The Board finds that appellant has not demonstrated clear evidence of error. This issue is medical in nature and must be addressed by medical evidence.<sup>16</sup> As noted, to establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by OWCP.<sup>17</sup> Appellant, however, did not submit medical evidence in support of his claim.

On appeal appellant contends that one of his bills from his hospital treatment on the date of the employment incident remained unpaid. He included a bill from the Virginia Emergency Medical Association relating to his treatment by Dr. Barker, Board-certified in emergency medicine, and a nurse practitioner, at Fauquier Hospital on December 26, 2019. However, the only issue before the Board is whether OWCP properly denied appellant's 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 finds that he has not provided evidence of

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<sup>12</sup> *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *Robert G. Burns*, *supra* note 10.

<sup>13</sup> *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 6 at Chapter 2.1602.5(a) (September 2020).

<sup>14</sup> *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

<sup>15</sup> 20 C.F.R. § 10.607(b); *R.P.*, Docket No. 22-0686 (issued September 30, 2022); *J.F.*, Docket No. 22-0572 (issued September 20, 2022); *S.M.*, Docket No. 16-0270 (issued April 26, 2016).

<sup>16</sup> *See J.J.*, Docket No. 19-0977 (issued December 31, 2020); *D.V.*, Docket No. 19-0588 (issued August 5, 2019).

<sup>17</sup> *S.M.*, Docket No. 19-1961 (issued January 28, 2021).

sufficient probative value or raised a substantial question as to the correctness of OWCP's decision. Thus, appellant has not established clear evidence of error.<sup>18</sup>

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 20, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>18</sup> See *D.R.*, Docket No. 22-0556 (issued October 25, 2022); *M.B.*, Docket No. 17-1505 (issued January 9, 2018).