

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

F.D., Appellant	)	
	)	
and	)	Docket No. 24-0145
	)	Issued: April 16, 2024
U.S. POSTAL SERVICE, WAPPINGERS FALLS	)	
POST OFFICE, Wappingers Falls, NY, 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  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 7, 2023 appellant filed a timely appeal from a November 27, 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 March 3, 2022, 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.

**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 July 21, 2020 appellant, then a 29-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 16, 2020 he rolled his right ankle when walking on an uneven

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

sidewalk while in the performance of duty. He stopped work on July 17, 2020. Appellant returned to full duty shortly thereafter, and subsequently filed a notice of recurrence (Form CA-2a) on August 26, 2020 alleging a recurrence of disability commencing July 23, 2020 causally related to the alleged July 16, 2020 employment incident. OWCP accepted the traumatic injury claim for sprain of ligament of right ankle. It paid appellant intermittent wage-loss compensation on the supplemental rolls, effective August 31, 2020.

On November 3, 2021 OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions for a second opinion evaluation with Dr. Frank J. Corrigan, a Board-certified orthopedic surgeon. In his December 9, 2021 report, Dr. Corrigan reviewed the SOAF and the medical records, and performed a physical examination. He related that appellant had no residuals of his accepted injury and required no further treatment.

By notice dated January 12, 2022, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits based on Dr. Corrigan's December 9, 2021 report. It afforded him 30 days to submit additional evidence or argument challenging the proposed action.

In a January 13, 2022 response to the proposed termination, appellant asserted that he wished to continue receipt of wage-loss compensation as he still needed physical therapy and had been seen by a physician within the previous 30 days.

By decision dated March 3, 2022, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that Dr. Corrigan's December 9, 2021 opinion represented the weight of the medical opinion evidence and established that he had no further disability or residuals due to his accepted July 16, 2020 employment injury.

In a September 7, 2023 report, Dr. Varinder Rathore, a Board-certified psychiatrist and neurologist, recounted that appellant had returned to work, but experienced exhaustion after his shift. He diagnosed major depression and attention deficit disorder.

In a November 17, 2023 statement, appellant asserted that he had experienced pain and swelling in his right lower extremity for several months and required additional treatment.

On November 22, 2023 appellant requested reconsideration.

By decision dated November 27, 2023, 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.<sup>2</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

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<sup>2</sup> *Id.* at § 8128(a); *see also* A.B., Docket No. 19-1539 (issued January 27, 2020); W.C., 59 ECAB 372 (2008).

decision for which review is sought.<sup>3</sup> Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS).<sup>4</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>5</sup>

OWCP may not deny a request for reconsideration solely because it was untimely filed. When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error.<sup>6</sup> If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review.<sup>7</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by OWCP.<sup>8</sup> The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.<sup>9</sup> Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.<sup>10</sup> 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 request for reconsideration bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.<sup>11</sup>

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.<sup>12</sup> The claimant must present evidence, which on its face shows that OWCP made an error.<sup>13</sup> 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

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<sup>3</sup> 20 C.F.R. § 10.607(a).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

<sup>5</sup> *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>6</sup> *See* 20 C.F.R. § 10.607(b); *D.H.*, Docket No. 23-0910 (issued November 30, 2023); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

<sup>7</sup> *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).

<sup>8</sup> *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).

<sup>9</sup> *J.D.*, Docket No. 19-1836 (issued April 6, 2020); *Leone N. Travis*, 43 ECAB 227 (1999).

<sup>10</sup> *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>11</sup> *T.N.*, Docket No. 18-1613 (issued April 29, 2020).

<sup>12</sup> *See supra* note 4 at Chapter 2.1602.5a (September 2020); *see also J.S.*, Docket No. 16-1240 (issued December 1, 2016).

<sup>13</sup> *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

development, is not clear evidence of error.<sup>14</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>15</sup>

### ANALYSIS

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

OWCP's regulations<sup>16</sup> and procedures<sup>17</sup> 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 issue(s).<sup>18</sup> The most recent merit decision addressing appellant's continuing disability and medical residuals was OWCP's March 3, 2022 termination decision. As his request for reconsideration was not received by OWCP until November 22, 2023, more than one year after the March 3, 2022 decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error.

The Board finds that appellant has not demonstrated clear evidence of error. The underlying issue is whether the medical evidence of record is sufficient to establish continuing disability and medical residuals causally related to the accepted July 16, 2020 employment injury. In support of appellant's request for reconsideration, OWCP received a report from Dr. Rathore dated September 7, 2023. Dr. Rathore's report does not address the accepted condition. As such his report does not establish that OWCP committed an error in OWCP's March 3, 2022 termination decision.<sup>19</sup> Thus, this report is insufficient to demonstrate clear evidence of error.<sup>20</sup>

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

### CONCLUSION

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

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<sup>14</sup> *Id.*

<sup>15</sup> *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

<sup>16</sup> 20 C.F.R. § 10.607(a); *see L.T.*, Docket No. 21-0844 (issued April 21, 2023); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Alberta Dukes*, 56 ECAB 247 (2005).

<sup>17</sup> *Supra* note 4 at Chapter 2.1602.4.

<sup>18</sup> 20 C.F.R. § 10.607(b).

<sup>19</sup> *L.B.*, Docket No. 19-0635 (issued August 23, 2019); *V.G.*, Docket No. 19-0038 (issued June 18, 2019); *C.V.*, Docket No. 18-0751 (issued February 22, 2019); *Leon J. Modrowski*, 55 ECAB 196 (2004); *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>20</sup> *D.H.*, *supra* note 6; *see L.T.*, *supra* note 16; *J.C.*, Docket No. 20-1250 (issued May 24, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 27, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board