



## ISSUE

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

## FACTUAL HISTORY

This case has previously been before the Board.<sup>4</sup> The facts and circumstances of the case as set forth in the Board's prior decisions and orders are incorporated herein by reference. The relevant facts are set forth below.

On May 31, 1994 appellant, then a 34-year-old city carrier, filed a claim for traumatic injury (Form CA-1) alleging that on that date she sustained injury to her upper chest and back in the performance of duty while "pulling down her route." OWCP accepted the claim for right shoulder strain, cervical strain, right shoulder impingement, and cervical herniation.<sup>5</sup> OWCP's records indicate that it last paid appellant wage-loss compensation on the supplemental rolls from August 13 to 22, 2000.

By decision dated August 22, 2000, OWCP terminated appellant's wage-loss compensation and medical benefits, effective August 13, 2000, for the accepted conditions of right shoulder impingement and cervical strain.

By decision dated December 15, 2009, OWCP terminated her compensation benefits under OWCP File No. xxxxxx429 for appellant's accepted cervical conditions of cervical strain and cervical disc herniation. Appellant subsequently requested a hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated August 17, 2011, OWCP's hearing representative affirmed the termination of appellant's compensation benefits.

Appellant requested reconsideration on September 2, 2011. On October 7, 2011 OWCP denied her request for reconsideration.

On January 27, 2012 appellant appealed to the Board. By decision dated October 22, 2012, the Board affirmed the termination of appellant's compensation benefits.<sup>6</sup> The Board explained

---

<sup>4</sup> *Order Remanding Case*, Docket No. 22-0558 (issued September 14, 2022); Docket No. 21-0253 (issued January 26, 2022); Docket No. 12-640 (issued October 22, 2012), *denying petition for recon.*, Docket No. 12-640 (issued March 14, 2013); Docket No. 10-318 (issued September 8, 2010); Docket No. 08-1843 (issued June 15, 2009); *Order Remanding Case*, Docket No. 06-1211 (issued January 31, 2007); Docket No. 05-1905 (issued March 6, 2006).

<sup>5</sup> OWCP assigned the present claim OWCP File No. xxxxxx429. Appellant has a prior claim for an August 24, 1992 traumatic injury assigned OWCP File No. xxxxxx724. OWCP accepted that claim for left knee strain, right hip contusion, and lumbosacral strain. Appellant also has a claim for a June 22, 2007 traumatic injury under OWCP File No. xxxxxx666, wherein she alleged that she sustained neck and right arm injuries on June 22, 2007 while sitting at her desk and working on her computer in the performance of duty and an occupational disease claim under OWCP file No. xxxxxx390, wherein she alleged that she sustained an aggravation of a preexisting condition resulting in pain in the neck, right arm, and right shoulder as a result of sitting at her desk and developing a muscle spasm, turning to the right, and feeling her neck "pop." OWCP denied the claim. OWCP File Nos., xxxxxx724, xxxxxx666, xxxxxx390, and xxxxxx429 have been administratively combined, with the latter serving as the master file.

<sup>6</sup> Docket No. 12-640 (issued October 22, 2012), *denying petition for recon.*, Docket No. 12-640 (issued March 14, 2013).

that OWCP initially accepted the claim for right shoulder strain, cervical strain, and right shoulder impingement. When the initial conflict arose regarding appellant's residuals and disability status between Dr. R. Thomas Grotz, appellant's treating physician, an orthopedic surgeon, and Dr. Richard G. Dedo, OWCP's second opinion physician, a Board-certified orthopedic surgeon, cervical disc herniation was not at issue. The Board further found that the impartial medical specialist, Dr. James M. Glick, to whom appellant was referred to resolve the conflict of medical opinion evidence regarding appellant's residuals and disability status, was not provided a proper medical background regarding appellant's cervical condition, therefore OWCP did not meet its burden of proof to terminate medical benefits for either cervical condition. OWCP properly referred appellant to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for a new second opinion evaluation. The Board thereafter found that Dr. Swartz provided a rationalized medical opinion that appellant's cervical conditions had resolved. The Board affirmed the OWCP decision dated August 17, 2011, which affirmed the termination of appellant's compensation benefits.

On November 16, 2020 appellant requested reinstatement of her wage-loss compensation and medical benefits. She argued in part that OWCP erred in inclusion of right shoulder impingement as a residual and accepted injury. Appellant further argued that OWCP erred in the termination of her medical benefits and compensation. She continued to request reconsideration on December 10, 18, 19, and 22, 2020 in which she further argued that OWCP had abused its discretion with regard to termination of her wage-loss compensation and medical benefits. In support thereof, appellant submitted correspondence dated from 1995 through 2009; a notification of personnel action (Standard Form SF-50) dated August 29, 1995; medical documents dated 1996 through 2007; correspondence regarding job offers dated October 30, 1996, January 22, 1997, and October 25, 2002; a union interview regarding grievance dated November 17, 2008; and a report of investigation by the inspector general of the employing establishment dated May 23, 2007.

By decision dated February 11, 2021, OWCP summarily denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error. It simply stated, "We did consider your request under 20 C.F.R. § 10.607(b) to determine whether you presented clear evidence that [OWCP's] last merit decision was incorrect." OWCP cited Board precedent and concluded, "You did not present clear evidence of error. Therefore, your request for reconsideration is denied because it was not received within the one-year limit."

In a letter dated February 18, 2021, appellant argued that she was employed for four hours a day until her benefits were terminated in 2000. However, she argued that she had aggravated her condition causing intermittent periods of disability until she stopped work in 2008.

On February 18, 2021 appellant appealed to the Board from OWCP's February 11, 2021 decision.

By decision dated January 26, 2022, the Board affirmed in part and set aside in part OWCP's February 11, 2021 nonmerit decision. The Board found that appellant's request for reconsideration was untimely filed; however, it further found that OWCP failed to properly explain its findings with regard to whether appellant's untimely reconsideration request failed to demonstrate clear evidence of error. The Board remanded the case for findings of fact and a

statement of reasons, to be followed by an appropriate decision on her untimely reconsideration request.<sup>7</sup>

By decision dated February 28, 2022, OWCP again denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It explained that she did not present clear evidence of error, as she did not submit medical evidence disputing the determination in 2000 that she could return to work at her regular duties on a full-time basis.

On March 5, 2022 appellant appealed to the Board. By order dated September 14, 2022, the Board remanded the case to OWCP. The Board found that in OWCP's February 28, 2022 decision, it had not reviewed medical documents dated 1996 through 2007 in order to determine if they demonstrated clear evidence of error. As OWCP failed to consider the medical evidence submitted by appellant on reconsideration, the Board could not review such evidence for the first time on appeal.<sup>8</sup> The Board remanded the case to OWCP to properly consider all the evidence of record.<sup>9</sup>

By decision dated October 25, 2022, OWCP reviewed the evidence of record from 1996 to 2007 and determined that these documents were either copies of documents already considered by OWCP at the time of its August 17, 2000 decision; or they did not address the issue of whether or not her work-related accepted conditions were active and disabling, or they did not establish a causal relationship between any conditions affecting her shoulder and her work-related injury of May 31, 1994. Consequently, it found that appellant did not establish clear evidence of error as to its August 17, 2000 decision.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right.<sup>10</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>11</sup> One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>12</sup>

OWCP procedures require a review of the file to determine whether the application for reconsideration was received within one year of a merit decision. The one-year period begins on the date of the original decision. However, a right to reconsideration within one year accompanies

---

<sup>7</sup> Docket No. 21-0523 (issued January 26, 2022).

<sup>8</sup> 20 C.F.R. § 501.2(c)(1). *See also G.M.*, Docket No. 16-1766 (issued February 16, 2017).

<sup>9</sup> *Order Remanding Case, D.B.*, Docket No. 21-0984 (issued December 27, 2021); *see M.J.*, Docket No. 18-0605 (issued April 12, 2019).

<sup>10</sup> This section provides in pertinent part: “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his] own motion or on application.” 5 U.S.C. § 8128(a).

<sup>11</sup> 20 C.F.R. § 10.607.

<sup>12</sup> *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board, and any merit decision following action by the Board, but does not include preresoupment hearing decisions.<sup>13</sup> Timeliness is determined by the document receipt date of the reconsideration request, *i.e.*, the received date in the Integrated Federal Employees' Compensation System (iFECS). If the request for reconsideration has a document received date greater than one year, the request must be considered untimely.<sup>14</sup>

OWCP will consider an untimely request for reconsideration only if it demonstrates clear evidence of error on the part of it in its most recent merit decision. The request must establish, on its face, that such decision was erroneous.<sup>15</sup> The term clear evidence of error is intended to represent a difficult standard. If clear evidence of error has not been presented, OWCP should deny the request by letter decision, which includes a brief evaluation of the evidence submitted and a finding made that clear evidence of error has not been shown.<sup>16</sup>

### ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim as it was untimely filed and failed to demonstrate clear evidence of error.<sup>17</sup>

Preliminarily, the Board notes that it is unnecessary to determine whether appellant's November 16, 2020 reconsideration request was untimely filed, because the Board considered the issue in its January 26, 2022 nonmerit decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>18</sup> The Board further finds that appellant has not demonstrated clear evidence of error. The underlying issue is whether appellant has established continuing disability or residuals causally related to her accepted conditions of cervical strain and cervical disc herniation.

The evidence submitted on reconsideration consisted of either copies of documents already considered by OWCP in its prior decisions; or they were irrelevant to the underlying issue. The Board finds that this evidence is of insufficient probative value to shift the weight of the evidence in favor of appellant and raise a substantial question as to the correctness of OWCP's decision.<sup>19</sup> The Board notes that clear evidence of error is intended to represent a difficult standard. Even the submission of a detailed well-rationalized report which, if submitted before the denial was issued,

---

<sup>13</sup> *Id.* at Chapter 2.1602.4a. (September 2020).

<sup>14</sup> *Id.* at Chapter 2.1602.4b. (September 2020); *see also S.J.*, Docket No. 19-1864 (issued August 12, 2020); *W.A.*, Docket No. 17-0225 (issued May 16, 2017).

<sup>15</sup> *W.A., id.; D.O.*, Docket No. 08-1057 (issued June 23, 2009); *Robert F. Stone*, 57 ECAB 292 (2005).

<sup>16</sup> *Supra* note 12 at Chapter 2.1602.5a. (September 2020).

<sup>17</sup> *D.B.*, Docket No. 19-0648 (issued October 21, 2020); *R.T.*, Docket No. 20-0298 (issued August 6, 2020).

<sup>18</sup> *J.B.*, Docket No. 24-0069 (issued April 17, 2024); *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1988).

<sup>19</sup> *See J.F.*, Docket No. 18-1802 (issued May 20, 2019); *J.S.*, Docket No. 10-0385 (issued September 15, 2010); *B.W.*, Docket No. 10-0323 (issued September 2, 2010).

would have created a conflict in medical opinion requiring further development, is not clear evidence of error.<sup>20</sup> The evidence noted does not show on its face that OWCP committed an error in its December 15, 2009 decision.

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

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 25, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2024  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

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

---

<sup>20</sup> *Supra* note 12 at Chapter 2.1602.5a (February 2016); *see E.G.*, Docket No. 20-0974 (issued February 26, 2021); *G.L.*, Docket No. 18-0852 (issued January 14, 2020).