

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

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F.P., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
WM. JENNINGS BRYAN DORN VA MEDICAL )  
CENTER, Columbia, SC, Employer )  
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**Docket No. 24-0484**  
**Issued: August 8, 2024**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 5, 2024 appellant filed a timely appeal from a February 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 August 31, 2022, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the case.<sup>2</sup>

**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.

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

<sup>2</sup> The Board notes that, following the February 1, 2024 decision, OWCP received additional evidence. 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 April 22, 2022 appellant, then a 51-year-old program analyst, filed an occupational disease claim (Form CA-2) alleging that she developed an exacerbation of asthma due to factors of her federal employment, including exposure to perfume and cologne.<sup>3</sup> She noted that she first became aware of her condition on February 10, 2022 and realized its relation to her federal employment on February 11, 2022. Appellant did not stop work.

In support of her claim, appellant submitted medical reports and out-of-work notes dated February 11 and 14, 2022 by Robert W. Christensen, a physician assistant, who diagnosed moderate persistent asthma with acute exacerbation and recommended medications, injections, and a consultation with a pulmonologist.

In a medical report dated February 18, 2022, Dr. April Kelley Getz, a Board-certified family medicine specialist, noted that appellant related complaints of cough, shortness of breath, and wheezing, which she attributed to exposure to perfume while at work. She performed an examination and diagnosed moderate persistent asthma with acute exacerbation. In a medical form report of even date, Dr. Getz noted that appellant had “reactions from time to time in her office or when out in the environment.” She recommended that she be permitted to work from home to allow her to control exposures, breathe more easily, and perform tasks and duties uninterrupted.

In a follow-up report dated February 22, 2022, Dr. Getz noted that appellant related complaints of headaches and congestion. She performed an examination and diagnosed acute sinusitis. In a note of even date, Dr. Getz requested that appellant be excused from work.

In a May 4, 2022 development letter, OWCP informed appellant of the deficiencies in her claim. It advised her of the type of factual and medical evidence needed to establish her claim, provided a questionnaire for her completion, and afforded her 30 days to respond. No response was received within the time allotted.

By decision dated August 31, 2022, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish that the diagnosed medical conditions were causally related to the accepted employment factors.

On January 21, 2024 appellant requested reconsideration of the August 31, 2022 decision. In support of her request, she submitted a January 16, 2024 response to OWCP’s questionnaire, a statement, and a letter summarizing the dates that she had missed work. Appellant also submitted duplicate copies of the February 2024 reports of Dr. Getz and Mr. Christensen, and additional reports and out of work notes by Dr. Getz dated April 26, August 18, and September 20, 2022, and by Mr. Christensen dated September 14, 2022, which documented treatment for asthma. By letter dated October 13, 2022, Dr. Getz recommended that she remain out of work indefinitely in order to attend appointments with specialists and undergo medication changes.

By decision dated February 1, 2024, OWCP 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>3</sup> OWCP assigned the present claim OWCP File No. xxxxxx986. Appellant has a prior traumatic injury claim (Form CA-1) for an April 13, 2021 asthma attack, which OWCP denied under OWCP File No. xxxxxx541. OWCP has not administratively combined appellant’s claims.

## 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> 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.<sup>9</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>10</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 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.

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.<sup>11</sup> 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

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<sup>4</sup> *Id.* at § 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 2.1602.4b (September 2020).

<sup>7</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>8</sup> *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).

<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 id.* at § 10.607(b); *supra* note 6 at Chapter 2.1602.5 (September 2020).

<sup>10</sup> *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *id.* at Chapter 2.1602.5a (September 2020).

<sup>11</sup> *G.G.*, *supra* note 7; *see also* 20 C.F.R. § 10.607(b); *id.* at Chapter 2.1602.5 (February 2016).

evidence of error.<sup>12</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>13</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.

A request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.<sup>14</sup> As appellant's request for reconsideration was not received until January 21, 2024, more than one year after the issuance of OWCP's August 31, 2022 merit decision, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in denying the claim.<sup>15</sup>

The Board further finds that appellant has not demonstrated clear evidence of error on the part of OWCP in its August 31, 2022 decision. The underlying issue is whether she met her burden of proof to establish a medical condition causally related to the accepted employment factors.

In support of her untimely request for reconsideration, appellant submitted duplicate copies of medical reports and notes dated February 2024 by Dr. Getz and Mr. Christensen; a response to OWCP's development questionnaire; a statement; a summary of dates that had she missed work; and additional medical reports by Dr. Getz and Mr. Christensen dated April 26 through October 13, 2022. However, she did not explain how her statements or the additional medical records raised a substantial question as to the correctness of OWCP's August 31, 2022 decision.<sup>16</sup> Moreover, 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>17</sup> The Board notes that clear evidence of error is intended to represent a difficult standard.<sup>18</sup> The argument and evidence submitted by appellant in support of her untimely request for reconsideration does not raise a substantial question as to the correctness of the denial of her claim.<sup>19</sup> Thus, the evidence is insufficient to demonstrate clear evidence of error.<sup>20</sup>

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<sup>12</sup> *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *id.* at Chapter 2.1602.5(a) (February 2016).

<sup>13</sup> *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

<sup>14</sup> 20 C.F.R. § 10.607(a).

<sup>15</sup> *Id.* at § 10.607(b); *see R.T.*, Docket No. 19-0604 (issued September 13, 2019); *see Debra McDavid*, 57 ECAB 149 (2005).

<sup>16</sup> *See G.B.*, Docket No. 18-1629 (issued April 15, 2019); *P.B.*, Docket No. 18-0265 (issued September 5, 2018); *D.E.*, 59 ECAB 438 (2008).

<sup>17</sup> *Supra* note 10.

<sup>18</sup> *Supra* note 9.

<sup>19</sup> *See P.T.*, Docket No. 18-0494 (issued July 9, 2018).

<sup>20</sup> *J.C.*, Docket No. 20-1250 (issued May 24, 2021); *W.D.*, Docket No. 19-0062 (issued April 15, 2019).

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

**CONCLUSION**

The Board finds that 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.

**ORDER**

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

Issued: August 8, 2024  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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