

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

R.G., Appellant)	
)	
and)	Docket No. 25-0043
)	Issued: December 19, 2024
U.S. POSTAL SERVICE, GREENSBORO)	
PROCESSING & DISTRIBUTION CENTER,)	
Greensboro, NC, Employer)	
)	

Appearances:
Misty L. Wenger, for the appellant¹
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 October 18, 2024 appellant, through his representative, filed a timely appeal from an October 8, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than one year has elapsed from OWCP's last merit decision, dated November 21, 2022, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On August 4, 2022 appellant, then a 76-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 8, 2022 he injured his right shoulder and back when loading parcels into his truck while in the performance of duty. He stopped work on July 8, 2022.

In a July 14, 2022 report, Dr. Sharon Nicole Babcock, a Board-certified orthopedic surgeon, reported that appellant presented right shoulder pain after he felt a "pop" in his arm on Friday, July 8, 2022 while lifting a heavy package. A primary diagnosis of tear of the right supraspinatus tendon was provided. In a duty status report (Form CA-17) of even date, Dr. Babcock noted the history of the July 8, 2022 injury and held appellant off work. She also held appellant off work in a July 14, 2022 note.

In a July 21, 2022 attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16), Dr. Babcock diagnosed a tear of the right supraspinatus tendon. She opined that the condition was caused or aggravated by the employment activity described as appellant heard a pop, had weak flexion and no prior injuries. Dr. Babcock further opined that appellant had been totally disabled since July 14, 2022.

In August 1 and 25, 2022 CA-17 forms, Rachel Edwards, a nurse practitioner, reported that on July 8, 2022 appellant, injured his back and shoulder while loading parcels in his truck. A diagnosis of a compression fracture of T12-L1 was provided. In a September 22, 2022 work status note, Ms. Edwards, held appellant off work until further notice.

In a September 24, 2022 Form CA-17, Dr. Babcock noted the history of the July 8, 2022 work injury, diagnosed complete right rotator cuff tear, and provided work restrictions.

In a September 26, 2022 note, Dr. Babcock indicated that appellant could work with restrictions, but deferred to "spine for return to work date."

In a development letter dated October 14, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated November 21, 2022, OWCP denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted July 8, 2022 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 6, 2024 appellant, through his representative, requested reconsideration of OWCP's November 21, 2022 decision. A complete copy of Dr. Babcock's July 14, 2022 report, which contained the history of injury, examination findings and assessed a tear of the right

supraspinatus tendon, was provided along with a duplicative copy of her July 21, 2022 attending physician's report, Part B of a Form CA-16.

In a November 16, 2023 report, Dr. Babcock indicated that she treated appellant for his July 8, 2022 work injury of an acute right rotator cuff tear. She noted that she first evaluated him on July 14, 2022 and set forth his medical care. Dr. Babcock further noted that appellant had also sustained a spine injury, which affected his ability to return to work.

By decision dated October 8, 2024, OWCP denied appellant's request for reconsideration of the merits of the claim 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.³ 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.⁴ 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 decision was in error.⁷ 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.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. 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

³ 5 U.S.C. § 8128(a); *G.B.*, Docket No. 21-0800 (issued January 11, 2024); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁴ 20 C.F.R. § 10.607(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

⁶ *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).

⁷ *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).

⁸ *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 5 at Chapter 2.1602.5 (February 2016).

⁹ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 6 at Chapter 2.1602.5a (September 2020).

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.¹⁰

OWCP's 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.¹¹ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹²

ANALYSIS

The Board finds that OWCP properly determined that appellant's request for reconsideration was untimely filed.

The last merit decision of record was OWCP's November 21, 2022 decision. As appellant's request for reconsideration was received by OWCP on October 6, 2024, more than one year after the November 21, 2022 merit decision, it was untimely filed. Consequently, he must demonstrate clear evidence of error by OWCP in denying his claim.¹³

The Board further finds that the evidence of record submitted prior to the issuance of OWCP's November 21, 2022 merit decision is sufficient to demonstrate clear evidence of error.¹⁴

Dr. Babcock, in the July 14, 2022 report, noted that appellant, a mail carrier, was lifting a heavy package on the previous Friday and felt a "pop" in his arm. She provided a primary diagnosis of tear of the right supraspinatus tendon. In her July 21, 2022 form report, Part B of Form CA-16, Dr. Babcock reiterated her diagnosis of a tear of the right supraspinatus tendon, which she opined was caused or aggravated by the employment activity described as appellant heard a pop, had weak flexion and no prior injuries. As this evidence contained a diagnosed medical condition in connection with the accepted July 8, 2022 employment incident, the Board finds that appellant has demonstrated clear evidence of error.

¹⁰ *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

¹¹ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 5 at Chapter 2.1602.5a (September 2020).

¹² *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹³ *Supra* note 6; *see also B.P.*, Docket No. 20-0179 (issued August 23, 2021); *F.L.*, Docket No. 21-0304 (issued July 13, 2021).

¹⁴ *See G.B.*, *supra* note 3; *S.M.*, Docket No. 18-1499 (issued February 5, 2020) (OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation, if the claimant's request for reconsideration shows clear evidence of error on the part of OWCP).

As such, OWCP abused its discretion in failing to reopen appellant's claim for further merit review.¹⁵ The Board will reverse OWCP's November 21, 2022 decision and remand the case for an appropriate decision on the merits of appellant's claim.¹⁶

CONCLUSION

The Board finds that appellant has demonstrated clear evidence of error in OWCP's November 21, 2022 merit decision and, thus, OWCP improperly denied his request for reconsideration of the merits of his claim.

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2024 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 19, 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

¹⁵ See *G.B.*, *supra* note 3; see, e.g., *A.B.*, Docket No. 10-1070 (issued March 8, 2011).

¹⁶ The Board notes that where the evidence of record establishes that the employing establishment issued a completed and properly executed Form CA-16 authorization, such form may constitute a contract for payment of medical expenses to a medical facility or physician. 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); *J.J.*, Docket No. 24-0724 (issued July 20, 2024); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003). In the present case only Part B -- Attending physician's report is of record. As it cannot be determined whether the Form CA-16 was completed and properly executed, it also cannot be determined if the Form CA-16 constituted a contract for payment of medical expenses. See *R.J.*, Docket No. 24-0885 (issued September 30, 2024).