

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

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C.B., Appellant	)	
	)	
and	)	<b>Docket No. 25-0107</b>
	)	<b>Issued: December 4, 2024</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>U.S. CUSTOMS AND BORDER PROTECTION,</b>	)	
<b>U.S. BORDER PATROL, San Diego, CA,</b>	)	
<b>Employer</b>	)	

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*Appearances:*  
Stephanie Leet, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 12, 2024 appellant, through counsel, filed a timely appeal from an October 29, 2024 nonmerit decision of the Office of Workers’ Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP’s last merit decision, dated October 6, 2015, to the filing of this appeal, pursuant to the Federal Employees’ Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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<sup>1</sup> 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 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## 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 April 14, 2015 appellant, then a 37-year-old border patrol agent, filed an occupational disease claim (Form CA-2) alleging that he sustained stress and emotional trauma due to factors of his federal employment, including a hostile work environment, harassment, retaliation, and violation of rights. He noted that he first became aware of his condition on June 19, 2014 and realized its relation to his federal employment on April 8, 2015.

In a development letter dated April 30, 2015, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received a letter dated April 14, 2015, wherein appellant described a disciplinary meeting held on June 19, 2014 which concerned his removal from a Fugitive Task Force assignment. Appellant related that he filed a grievance in 2014, following which he was retaliated against, and was refused access to a previously issued computer, from which he wanted to retrieve work-related files. He also described his prior assignments and details from 2009. Appellant alleged that he was not selected for a position as a Border Patrol Agent-Intelligence even though he was highly qualified for the position. He concluded that his rights and federal protections had been violated on various levels and he had been subjected to prohibited personnel practices and violations of employment establishment policies and federal laws.

In a development letter dated June 15, 2015, OWCP requested that the employing establishment review and comment on appellant's multiple allegations. It afforded the employing establishment 30 days to respond.

On June 24, 2015 OWCP received a response dated May 26, 2015, wherein a supervisor related that appellant had come to him approximately six weeks prior and advised that he was filing a stress claim. Appellant then informed him of some details related to an investigation which resulted in his removal from a Sector Task Force. He alleged that this action was without just cause. The supervisor also described appellant's current assignment to the Imperial Beach Station Case Development unit.

By decision dated October 6, 2015, OWCP denied appellant's emotional condition claim. It distinguished which alleged factors were not compensable factors of employment, and which were not factually established. OWCP further explained that because no factors of employment were established as compensable, it was unnecessary to review the medical evidence.

On October 21, 2024 appellant, through counsel, requested reconsideration. Counsel acknowledged that the request was untimely, but argued that it demonstrated clear evidence of error. He contended that appellant's claim was not properly developed because the claims

examiner failed to properly evaluate appellant's allegations and create a statement of accepted facts (SOAF). Counsel further argued that the medical evidence of record established at least a *prima facie* case of anxiety and depression based on the work exposure. The reconsideration request included a November 28, 2023 psychological evaluation of appellant by Dr. Michael Campbell, a neuropsychologist.

By decision dated October 29, 2024, OWCP denied appellant's reconsideration request, 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>3</sup> To be entitled to a merit review of an OWCP decision, a request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>4</sup> Timeliness is determined by the document receipt date of the request for reconsideration as is indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS).<sup>5</sup> The Board has found that the imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>6</sup>

OWCP may not deny a request for reconsideration solely because it was untimely filed. When a request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether the request demonstrates clear evidence that OWCP's most recent merit decision was in error.<sup>7</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 demonstrates clear evidence of error on the part of OWCP.<sup>8</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>9</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue decided by OWCP. The evidence must be positive, precise, and explicit, and it must manifest

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<sup>3</sup> *Id.* at § 8128(a); *see M.M.*, Docket No. 21-1203 (issued December 22, 2022); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

<sup>4</sup> 20 C.F.R. § 10.607(a).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

<sup>6</sup> *G.G.*, Docket No. 18-1074 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>7</sup> *See* 20 C.F.R. § 10.607(b); *R.S.*, Docket No. 19-0180 (issued December 5, 2019); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

<sup>8</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; *supra* note 5 at Chapter 2.1602.5a (September 2020).

<sup>9</sup> *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

on its face that OWCP committed an error.<sup>10</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>11</sup> 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 evidence of error on the part of OWCP.<sup>12</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP such that it abused its discretion in denying merit review in the face of such evidence.<sup>13</sup>

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.<sup>14</sup> The claimant must present evidence, which on its face shows that OWCP made an error.<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.

As noted above, a request for reconsideration must be received within one year of the date of the last merit decision for which review is sought.<sup>16</sup> As appellant's request for reconsideration was not received by OWCP until October 21, 2024, more than one year after the October 6, 2015 merit decision, it was untimely filed. Consequently, the request must demonstrate clear evidence of error by OWCP in its October 6, 2015 decision.

The Board notes that the underlying issue is factual in nature, *i.e.*, whether appellant established a compensable factor of employment regarding his emotional condition claim. On reconsideration, appellant argued that the claims examiner had not created a SOAF. However, as the underlying issue is factual in nature, appellant's argument is irrelevant and therefore, does not manifest on its face that OWCP committed an error in the October 6, 2015 decision.<sup>17</sup> As well,

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<sup>10</sup> 20 C.F.R. § 10.607(b); *B.W.*, Docket No. 19-0626 (issued March 4, 2020); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

<sup>11</sup> *See G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

<sup>12</sup> *Id.*

<sup>13</sup> *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Mahews*, 44 ECAB 765, 770 (1993).

<sup>14</sup> *Supra* note 5 at Chapter 2.1602.5a (September 2020); *see also J.S.*, Docket No. 16-1240 (issued December 1, 2016).

<sup>15</sup> *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

<sup>16</sup> *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, *supra* note 9; *see supra* note 5 at Chapter 2.1602.5a (September 2020); *see also J.S.*, *supra* note 14.

<sup>17</sup> *See L.T.*, Docket No. 21-0844 (issued April 21, 2023); *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); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

the Board notes that the November 28, 2023 medical report submitted on reconsideration is also irrelevant to the underlying issue which is factual in nature and does not demonstrate clear error.

As noted, the term clear evidence of error is intended to represent a difficult standard, the claimant must present evidence which on its face shows that OWCP made an error, and evidence which, if submitted before the denial was issued, would have required further development, is not clear evidence of error.<sup>18</sup> The Board finds that the evidence submitted on reconsideration is insufficient to demonstrate clear evidence of error on the part of OWCP in its October 6, 2015 decision, as it does not factually establish a compensable factor of employment.<sup>19</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>18</sup> *Supra* notes 15 and 16.

<sup>19</sup> *See W.R.*, Docket No. 18-1042 (issued February 12, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 29, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2024  
Washington, DC

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

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

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