

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

M.A., Appellant)	
)	
and)	Docket No. 24-0595
)	Issued: July 8, 2024
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Providence, RI,)	
Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>David A. Salzillo, Esq., for the appellant¹</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 14, 2024 appellant filed a timely appeal from a November 22, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days have elapsed from OWCP's last merit decision, dated June 30, 2021, 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 this 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 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, finding that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On November 27, 2020 appellant, then a 65-year-old tractor trailer operator, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral upper extremity conditions due to factors of his federal employment, including repetitive turning of his neck and body, reaching, squatting, bending, and moving heavy mail cages weighing 50 to 100 pounds.³ He indicated that he first became aware of his condition and its relationship to his federal employment on November 24, 2020.

In a development letter dated December 15, 2020, OWCP informed appellant of the deficiencies in his claim. It advised him of the type of factual and medical evidence necessary to establish his claim. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding the claim. It afforded both parties 30 days to respond.

By decision dated January 22, 2021, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 27, 2021 appellant, through counsel, requested reconsideration. In support of his request, he submitted additional evidence. In a June 17, 2020 medical report, Dr. Phyllis Chen, a Board-certified internist, opined that appellant's prior employment injuries were restricting him from performing his current work duties. In an August 24, 2020 note, Dr. Chen opined that appellant's 2016 work injuries were causing his neck pain and thus, his current conditions were causally related to his employment.

By decision dated June 30, 2021, OWCP denied modification of its January 22, 2021 decision.

On June 28, 2022 appellant, through counsel, requested reconsideration. In support of the reconsideration request, he referenced a new medical report dated April 5, 2022, from Dr. Chen who indicated that appellant's conditions from his prior work-related injuries were exacerbated and that there was nothing else that could explain the exacerbation. Counsel argued that Dr. Chen causally related appellant's conditions to the accepted employment factors.

³ OWCP assigned the claim OWCP File No. xxxxxx666. Appellant also has a previously accepted traumatic injury claim (Form CA-1) for a left shoulder contusion, cervical spondylosis with radiculopathy, and bicipital tendinitis of the left shoulder under OWCP File No. xxxxxx556. OWCP administratively combined the claims with the latter serving as the master file.

By decision dated September 15, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a). It found that the April 5, 2022 report of Dr. Chen was cumulative and substantially similar to evidence previously considered in its prior decisions.

On September 14, 2023 appellant, through counsel, requested reconsideration. He contended that OWCP disregarded the April 5, 2022 report of Dr. Chen in its September 15, 2022 decision.

By decision dated November 22, 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.⁴ 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.⁵ Timeliness is determined by the document receipt date, *i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS).⁶ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁷

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.⁸ 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.⁹ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹⁰

⁴ *Id.* at § 8128(a); *A.P.*, Docket No. 21-1222 (issued February 9, 2023); *see T.J.*, Docket No. 21-0586 (issued September 30, 2021); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁵ 20 C.F.R. § 10.607(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁷ *A.P.*, *id.*; *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).

⁸ *See* 20 C.F.R. § 10.607(b); *A.P.*, *id.*; *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

⁹ *A.P.*, *id.*; *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 6 at Chapter 2.1602.5 (September 2020).

¹⁰ *A.P.*, *id.*; *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹¹ 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.¹² The claimant must present evidence which on its face shows that OWCP made an error.¹³ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁴

ANALYSIS

The Board finds that OWCP properly found that appellant's request for reconsideration 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 OWCP's decision for which review is sought.¹⁵ As appellant's request for reconsideration was not received by OWCP until September 14, 2023, more than one year after the issuance of OWCP's June 30, 2021 merit decision, it was untimely filed. Consequently, he must demonstrate clear evidence of error on the part of OWCP.¹⁶

The Board further finds that the evidence of record is insufficient to demonstrate clear evidence of error on the part of OWCP in its decision. In support of his untimely reconsideration request, counsel argued that OWCP failed to consider the April 5, 2022 report of Dr. Chen in its September 15, 2022 decision. However, OWCP in its September 15, 2022 decision referenced Dr. Chen's April 5, 2022 narrative report and found that it was cumulative and substantially similar to evidence previously considered in its prior decisions and therefore, the evidence was insufficient to warrant merit review. Thus, this argument does not demonstrate OWCP erred in the issuance of its June 30, 2021 merit decision.

¹¹ *S.U.*, Docket No. 24-0213 (issued April 19, 2024); *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 6 at Chapter 2.1602.5(a) (September 2020).

¹² *See supra* note 6 at Chapter 2.1602.5(a) (September 2020); *S.U., id.*; *see also J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹³ *S.U., supra* note 11; *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

¹⁴ *S.U., id.*; *D.S.*, Docket No. 17-0417 (issued May 24, 2017).

¹⁵ *Supra* note 5.

¹⁶ 20 C.F.R. § 10.607(b); *J.A.*, Docket 21-0655 (issued July 6, 2023).

The Board notes that clear evidence of error is intended to represent a difficult standard.¹⁷ Appellant has not provided any argument or evidence demonstrating that OWCP's last merit decision was improperly decided. Accordingly, the Board finds that appellant's request for reconsideration did not show on its face that OWCP committed an error in denying his traumatic injury claim.¹⁸

For these reasons, 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.

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.

ORDER

IT IS HEREBY ORDERED THAT the November 22, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 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

¹⁷ *R.W.*, Docket No. 24-0235 (issued April 11, 2024); *M.P.*, Docket No. 19-0200 (issued June 14, 2019).

¹⁸ *S.U.*, *supra* note 11; *S.C.*, Docket No. 19-1424 (issued September 15, 2020).