

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

E.R., Appellant	)	
	)	
and	)	Docket No. 24-0681
	)	Issued: July 29, 2024
U.S. POSTAL SERVICE, POST OFFICE,	)	
San Jose, CA, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On June 13, 2024 appellant filed a timely appeal from a May 21, 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 July 21, 2021, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

**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**

This case has previously been before the Board.<sup>1</sup> The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On September 6, 2000 appellant, then a 53-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that he injured his left ribs, right arm, and back when he was struck by a mail container while in the performance of duty. OWCP accepted the claim for left rib contusion/left chest wall contusion and a right shoulder sprain. It paid appellant wage-loss compensation on the supplemental rolls for the period October 24, 2002 to February 24, 2003.<sup>2</sup>

On January 21, 2021 appellant filed a notice of recurrence (Form CA-2a) of the need for medical treatment only. He noted that January 1, 2020 was the date of recurrence, and he first received medical treatment following the recurrence on December 10, 2020. Appellant indicated that he was limited in performing his usual duties following the original injury of September 6, 2000. He noted that when he retired on October 31, 2003, he had limited range of motion in his right shoulder and left shoulder pain and that he took anti-inflammatory drugs. Appellant indicated that on January 1, 2020 he had increased pain and decreased range of motion in both shoulders.

In a development letter dated February 1, 2021, OWCP informed appellant of the deficiencies of his recurrence claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated March 4, 2021, OWCP denied appellant's recurrence claim, finding that he had not established that he required additional medical treatment due to a worsening of his accepted work-related conditions without an intervening cause.

On April 7, 2021 appellant requested reconsideration. He provided a February 9, 2021 response to OWCP's development questionnaire and a March 4, 2021 statement in which he indicated that he was diagnosed with adhesive capsulitis in both shoulders.

OWCP also received an August 28, 2003 report from Dr. Richard D. Heater, a Board-certified orthopedic surgeon, who provided an impression of bilateral adhesive capsulitis. In an undated attending physician's report (Form CA-20), Dr. Satish K. Sharma, an anesthesiologist, opined, with an affirmative checkmark, that appellant's bilateral adhesive capsulitis was caused or aggravated by an employment activity.

By decision dated July 21, 2021, OWCP denied modification of its March 4, 2021 decision, finding that the medical evidence of record was insufficient to establish that appellant's recurrence

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<sup>1</sup> Docket No. 05-892 (issued September 19, 2005); Docket No. 07-1769 (issued April 28, 2008), *petition for recon. denied*, Docket No. 07-1769 (issued November 21, 2008); Docket No. 22-1279 (issued January 10, 2023), *petition for recon. denied*, Docket No. 22-1279 (issued September 15, 2023).

<sup>2</sup> Appellant retired from the employing establishment on October 31, 2003.

of the need for medical treatment was causally related to the September 5, 2000 work injury without an intervening cause.

On July 19, 2021 appellant requested reconsideration. He requested that his claim be amended to include a recurrence of medical treatment for “consequential and intervening injury for adhesive capsulitis.” Appellant also addressed the medical treatment he received in 2002 through 2019 for adhesive capsulitis.

By decision dated July 21, 2021, OWCP denied modification of its July 1, 2021 decision, as he had not established a consequential injury/condition which stemmed from his accepted September 6, 2000 work-related injury.

On February 28, 2022 appellant requested reconsideration. He reargued that his claim was for a “consequential injury and intervening injury for adhesive capsulitis.” Evidence previously of record was resubmitted.

By decision dated May 26, 2022, OWCP denied appellant’s request for reconsideration of the merits of appellant’s claim, pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By decision dated January 10, 2023, the Board affirmed OWCP’s May 26, 2022 nonmerit decision.<sup>3</sup>

On January 30, 2024 appellant requested reconsideration of OWCP’s July 21, 2021 decision. He reargued that his intent to amend his claim for recurrence was to have “consequential injury and intervening injuries” considered for adhesive capsulitis, not a recurrent disability. Appellant submitted a duplicate copy of the August 28, 2003 report wherein Dr. Heater diagnosed bilateral adhesive capsulitis and suggested treatment for appellant’s shoulders.

By decision dated May 21, 2024, OWCP denied appellant’s request for reconsideration of OWCP’s July 21, 2021 decision, 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>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 of the request for reconsideration as indicated by the received date in the Integrated Federal

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<sup>3</sup> Docket No. 22-1279 (issued January 10, 2023), *petition for recon. denied*, Docket No. 22-1279 (issued September 15, 2023).

<sup>4</sup> 5 U.S.C. § 8128(a); *see also* A.B., Docket No. 19-1539 (issued January 27, 2020); W.C., 59 ECAB 372 (2008).

<sup>5</sup> 20 C.F.R. § 10.607(a).

Employees' Compensation System (iFECS).<sup>6</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>7</sup>

OWCP may not deny a request for reconsideration solely because it was untimely filed. When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error.<sup>8</sup> If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review.<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.<sup>11</sup> Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.<sup>12</sup> This entails a limited review by OWCP of how the evidence submitted with the request for reconsideration bears on the evidence previously of record, and whether the new evidence demonstrates clear error on the part of OWCP.<sup>13</sup>

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.<sup>14</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. Even 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>15</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>16</sup>

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

<sup>7</sup> *G.G.*, Docket No. 18-1074 (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).

<sup>10</sup> *A.A.*, Docket No. 19-1219 (issued December 10, 2019); *J.F.*, Docket No. 18-1802 (issued May 20, 2019); *J.D.*, Docket No. 16-1767 (issued January 12, 2017); *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>11</sup> *J.D.*, Docket No. 19-1836 (issued April 6, 2020); *Leone N. Travis*, 43 ECAB 227 (1999).

<sup>12</sup> *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>13</sup> *T.N.*, Docket No. 18-1613 (issued April 29, 2020).

<sup>14</sup> *See supra* note 6 at Chapter 2.1602.5a (September 2020); *see also K.W.*, Docket No. 19-1808 (issued April 2, 2020), *J.S.*, Docket No. 16-1240 (issued December 1, 2016).

<sup>15</sup> *Id.*

<sup>16</sup> *W.R.*, Docket No. 24-0244 (issued May 22, 2024); *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

### ANALYSIS

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

As explained 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>17</sup> As appellant's request for reconsideration was not received by OWCP until January 30, 2024, more than one year after its July 21, 2021 merit decision denying his recurrence claim, it was untimely filed.<sup>18</sup> Consequently, he must demonstrate clear evidence of error by OWCP in its July 21, 2021 decision.<sup>19</sup>

On reconsideration, appellant argued that the intent to amend his claim for recurrence was to have "consequential injury and intervening injuries" considered for adhesive capsulitis, not a recurrent disability. He submitted a duplicate copy of Dr. Heater's August 28, 2003 report that was previously considered by OWCP. The Board notes that clear evidence of error is intended to represent a difficult standard.<sup>20</sup> Appellant merely reiterated his previous argument and resubmitted evidence previously considered by OWCP. Therefore, the Board finds that his request for reconsideration does not demonstrate that OWCP committed error in its July 21, 2021 decision.<sup>21</sup>

Accordingly, 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 as it was untimely filed and failed to demonstrate clear evidence of error.

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<sup>17</sup> See *supra* note 6; *L.C.*, Docket No. 18-1407 (issued February 14, 2019).

<sup>18</sup> See *id.*

<sup>19</sup> See *supra* note 9.

<sup>20</sup> See *supra* note 15.

<sup>21</sup> See *B.C.*, Docket No. 24-0022 (issued April 25, 2024).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 21, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 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