

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

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<b>D.D., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 24-0230</b>
	)	<b>Issued: June 14, 2024</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Milwaukee, WI, 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 January 4, 2024 appellant, through counsel, filed a timely appeal from December 12, 2023 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decisions, dated June 11 and August 9, 2021, 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.*

## **ISSUES**

The issues are: (1) whether OWCP properly denied appellant's request for reconsideration of the merits of his disability compensation claim, finding that it was untimely filed and failed to demonstrate clear evidence of error; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his expansion claim, 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>3</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 3, 2020 appellant, then a 59-year-old general expeditor, filed a traumatic injury claim (Form CA-1) alleging that on November 9, 2020 he contracted COVID-19 while in the performance of duty. He stopped work on November 9, 2020. On April 5, 2021 OWCP accepted the claim for COVID-19.

On February 3, 2021 Dr. Nicholas Ghannam, a Board-certified internist, diagnosed vasculitis, neuropathy, and aortic aneurysm. He found that appellant was disabled from work due to persistent symptoms related to inflammation from vasculitis including abdominal and lower chest pains. Dr. Ghannam opined that he would be disabled from work for up to three months.

In a report dated March 30, 2021, Dr. Ghannam diagnosed COVID-19 infection and post-COVID-19 infection syndrome with severe fatigue. He noted that appellant was diagnosed with vasculitis and an aortic aneurysm dilation. Dr. Ghannam provided appellant's positive antibody test for COVID-19 dated January 6, 2021.

Beginning on April 15, 2021, appellant filed a series of claims for compensation (Form CA-7) for disability from work during the period December 19, 2020 through April 9, 2021.

In development letters dated April 21, 2021, OWCP informed appellant of the deficiencies of his claims for expansion and disability compensation. It advised him of the type of medical evidence needed to establish his claims, and afforded him 30 days to respond.

OWCP subsequently received additional evidence. In a March 18, 2021 report, Dr. Yoon Young Qiu, a rheumatologist, diagnosed vasculitis and recounted that she had examined appellant on February 4 and March 18, 2021.

On May 26, 2021 Dr. Ghannam noted that appellant had an abnormal stress test and opined that he continued to be totally disabled from work.

By decision dated June 11, 2021, OWCP denied appellant's claim for disability from work during the period December 19, 2020 through April 9, 2021, finding that the medical evidence of

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<sup>3</sup> Docket No. 22-1109 (issued November 30, 2022).

record was insufficient to establish disability from work during the claimed period due to his accepted November 9, 2020 employment injury.

By decision dated June 14, 2021, OWCP denied appellant's request to expand the acceptance of his claim to include additional conditions as causally related to, or as a consequence of his accepted employment injury.

On July 1, 2021 appellant requested reconsideration of OWCP's June 14, 2021 denial of expansion. He provided additional medical evidence, including a July 1, 2021 note from Dr. Qiu diagnosing vasculitis involving the celiac artery and its branches. She diagnosed this condition in January 2021 and noted that appellant had contracted COVID-19 in November 2020. Dr. Qiu noted that there were reports of vasculitis occurring in patients infected with COVID-19, but that vasculitis could also occur in the absence of infection, such that it was not possible to know if his vasculitis was related to his prior COVID-19 infection. In a June 29, 2021 report, Dr. Ghannam opined that appellant was disabled from work.

By decision dated August 9, 2021, OWCP denied modification of its June 14, 2021 denial of expansion.

OWCP subsequently received a note dated August 20, 2021, wherein Christina L. Starks, a physician assistant, opined that appellant was totally disabled from work.

On May 28, 2022 appellant requested reconsideration of the August 9, 2021 decision.

By decision dated June 10, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim for expansion, pursuant to 5 U.S.C. § 8128.

Appellant appealed the June 10, 2022 decision to the Board. By decision dated November 30, 2022, the Board affirmed the June 10, 2022 decision.

While the appeal was pending, on August 8, 2022, Dr. Ghannam examined appellant and opined that he was disabled from work due to long-term COVID-19, emphysema, and cognitive impairment.<sup>4</sup>

On December 6, 2023 appellant, through counsel, requested reconsideration of OWCP's June 14 and August 9, 2021 denial of expansion. In an accompanying statement dated November 28, 2023, counsel noted that appellant had been diagnosed with post-COVID syndrome, COVID-19 long hauler, chronic fatigue, depression, vasculitis, neuropathy, and an aortic aneurysm, all as a result of COVID-19. She summarized the medical evidence, including newly submitted reports from Dr. Ghannam dated July 5 and August 23, 2023, and noted that OWCP should further develop the issue of expansion of the claim to include post-COVID syndrome, COVID-19 long hauler, chronic fatigue, memory and cognitive issues, and depression or accept

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<sup>4</sup> On November 29, 2023 appellant, through counsel, requested that the claim be expanded to include the additional consequential conditions of post-COVID syndrome, COVID-19 long hauler, chronic fatigue, and depression. Counsel contended that while expansion had previously been denied, the prior expansion request was not for these specific diagnoses.

these conditions, together with vasculitis, neuropathy, and an aortic aneurysm, as causally related to his accepted employment injury.

On December 6, 2023 appellant, through counsel, requested reconsideration of the June 11, 2021 denial of disability compensation. Counsel contended that new medical evidence established appellant's entitlement to wage-loss compensation, that the case was not properly developed as to the consequential conditions diagnosed, that a statement of accepted facts was not created despite a consequential psychological diagnosis, and that the claims examiner improperly invaded the province of the physicians. Counsel further argued that OWCP had improperly shifted the burden of proof to appellant when it had the burden of proof to terminate benefits.

Appellant provided notes dated November 16, 2020 through June 29, 2021 from Dr. Ghannam, who examined appellant due COVID-19 symptoms and diagnosed benign hypertension with chronic kidney disease, stage III, morbid obesity, vasculitis, dilated aortic root, and memory loss with a history attention deficit disorder, worsening since a COVID-19 infection.

In an April 27, 2021 report, Dr. Ghannam diagnosed post-COVID syndrome with chronic fatigue. He noted that on January 24, 2021 appellant was hospitalized with severe vasculitis, or inflammatory changes of his blood vessels and an aortic aneurysm. Dr. Ghannam reported that appellant continued to have positive antibody testing for COVID-19 on January 6, 2021 and was partially disabled. He completed duty status reports (Form CA-17) and treatment notes dated August 20, 2021 through August 23, 2023 diagnosing post-viral fatigue syndrome, vasculitis, osteoarthritis, and post-severe COVID syndrome. He provided work restrictions. On April 26, 2022 Dr. Ghannam described appellant's symptoms of progressive shortness of breath, lung emphysema, vasculitis, and progressive memory loss. He found that appellant had been disabled since November 2020 due to his COVID infection. In a note dated August 8, 2022, Dr. Ghannam recounted the diagnosis of mild recurrent major depression as provided by a Dr. Graham, a neurologist, on July 22, 2022.

In an April 26, 2023 note, Dr. Ghannam diagnosed benign hypertension with chronic kidney disease, stage III, COVID-19 long hauler manifesting chronic fatigue, centrilobular emphysema, spinal stenosis of the lumbar region with neurogenic claudication, constipation, and colon polyp. On June 28, 2023 Dr. Ghannam diagnosed stage 3 chronic kidney disease.

In reports dated July 5 and August 23, 2023, Dr. Ghannam recounted that appellant contracted COVID-19 at work. He explained that due to the inflammation associated with the COVID-19 infection, appellant experienced vasculitis, or inflammation of the blood vessels, and was treated with prednisone by a rheumatologist. Dr. Ghannam opined that appellant had experienced progressive inflammation-related decline in his memory and concentration such that he was unable to perform the tasks required by any job. He further diagnosed osteoarthritis of both knees, benign hypertension with chronic kidney disease, chest pain, COVID-19 long hauler manifesting chronic fatigue, and aneurysm of ascending aorta without rupture. Dr. Ghannam determined that appellant was disabled since December 26, 2020 due to his COVID-19 infection. He also provided test results of even date.

By decision dated December 12, 2023, OWCP denied appellant's request for reconsideration of the June 11, 2021 denial of disability compensation, finding that it was untimely filed and failed to demonstrate clear evidence of error.

By separate decision also dated December 12, 2023, OWCP denied appellant's request for reconsideration of the August 9, 2021 denial of expansion, finding that it was untimely filed and failed to demonstrate clear evidence of error.<sup>5</sup>

### **LEGAL PRECEDENT -- ISSUES 1 AND 2**

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.<sup>6</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>7</sup> Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).<sup>8</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>9</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>10</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 for reconsideration demonstrates "clear evidence of error" on the part of OWCP.<sup>11</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>12</sup>

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<sup>5</sup> OWCP noted that appellant's request for expansion of his claim to including vasculitis, neuropathy, and aortic aneurysm as denied, but that the additional conditions of depression, post-COVID-syndrome, COVID-19 long hauler, chronic fatigue, memory, a cognitive issue could be developed.

<sup>6</sup> 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

<sup>7</sup> 20 C.F.R. § 10.607(a).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

<sup>9</sup> *W.B.*, Docket No. 23-0473 (issued August 29, 2023); *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>10</sup> *See* 20 C.F.R. § 10.607(b); *R.C.*, Docket No. 21-0617 (issued August 25, 2023); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

<sup>11</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 8 at Chapter 2.1602.5 (September 2020).

<sup>12</sup> *S.D.*, Docket No. 23-0626 (issued August 24, 2023); *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.<sup>13</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.<sup>14</sup>

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. 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>

### **ANALYSIS -- ISSUE 1**

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

OWCP's regulations establish a one-year time limit for requesting reconsideration, which begins on the date of the original merit decision. The most recent merit decision on the issue of disability was the June 11, 2021 decision. As OWCP received appellant's request for reconsideration on December 6, 2023, more than one year after the June 11, 2021 merit decision, the Board finds that the request was untimely filed.<sup>17</sup> Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in its June 11, 2021 decision.

On reconsideration, counsel argued that OWCP committed error and submitted medical evidence. In reports dated November 16, 2020 through August 23, 2023, Dr. Ghannam provided work restrictions and various diagnoses. He opined that appellant was disabled from work since November 2020 due to his COVID-19 infection. Dr. Ghannam's records, however, did not include medical rationale, and were therefore insufficient to raise a substantial question as to the correctness of OWCP's June 11, 2021 merit decision.<sup>18</sup> Thus, this evidence is insufficient to demonstrate clear evidence of error.

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<sup>13</sup> *J.M.*, Docket No. 22-0630 (issued February 10, 2023); *S.C.*, Docket No. 18-0126 (issued May 14, 2016).

<sup>14</sup> *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *Robert G. Burns*, *supra* note 12.

<sup>15</sup> *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 8 at Chapter 2.1602.5(a) (September 2020).

<sup>16</sup> *L.J.*, Docket No. 23-0282 (issued May 26, 2023); *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

<sup>17</sup> *Supra* note 6.

<sup>18</sup> *Supra* note 14.

The term clear evidence of error is intended to represent a difficult standard. It is not enough to show that evidence could be construed so as to produce a contrary conclusion.<sup>19</sup> The Board finds that the argument and evidence submitted on reconsideration do not show that OWCP committed error in its June 11, 2021 decision. Appellant has not otherwise submitted evidence sufficient to raise a substantial question as to the correctness of OWCP's June 11, 2021 decision. Therefore, OWCP properly denied appellant's request for reconsideration.

### *ANALYSIS -- ISSUE 2*

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

As explained above, OWCP's regulations establish a one-year time limit for requesting reconsideration, which begins on the date of the original merit decision. The most recent merit decision on the issue of expansion was OWCP's August 9, 2021 decision. As OWCP received appellant's request for reconsideration on December 6, 2023, more than one year after the August 9, 2021 merit decision, the Board finds that the request was untimely filed.<sup>20</sup> Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in its June 11, 2021 decision.

On reconsideration, OWCP received a series of reports and notes from Dr. Ghannam dated November 16, 2020 through August 23, 2023 diagnosing vasculitis, neuropathy, and aortic aneurysm as well as other conditions. Dr. Ghannam's opinions, however, did not include medical rationale, and were therefore insufficient to raise a substantial question as to the correctness of OWCP's August 9, 2021 merit decision. The remainder of the medical evidence submitted with appellant's untimely request for reconsideration did not address the underlying issue of causal relationship between appellant's diagnosed vasculitis, neuropathy, and aortic aneurysm and the accepted November 9, 2020 COVID-19 diagnoses. Thus, this medical evidence fails to manifest on its face that OWCP committed an error in denying the claim.<sup>21</sup> Appellant has not submitted evidence sufficient to raise a substantial question as to the correctness of OWCP's decision.<sup>22</sup> Thus, the Board finds that the evidence submitted on reconsideration is insufficient to demonstrate clear evidence of error on the part of OWCP in its August 9, 2021 decision and, therefore, OWCP properly denied appellant's request for reconsideration.<sup>23</sup>

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<sup>19</sup> *M.M.*, Docket No. 22-1204 (issued April 7, 2023); *H.H.*, Docket No. 21-1137 (issued January 26, 2023).

<sup>20</sup> *Supra* note 6.

<sup>21</sup> *Id.*

<sup>22</sup> *L.T.*, Docket No. 21-0844 (issued April 21, 2023).

<sup>23</sup> *Id.*

**CONCLUSION**

The Board finds that OWCP properly denied appellant’s request for reconsideration of the merits of his disability compensation claim, finding that it was untimely filed and failed to demonstrate clear evidence of error. The Board further finds that OWCP properly denied appellant’s request for reconsideration of the merits of his expansion claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 12, 2023 decisions of the Office of Workers’ Compensation Programs are affirmed.

Issued: June 14, 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