

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

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R.B., Appellant)	
)	
and)	Docket No. 24-0350
)	Issued: October 7, 2024
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Oklahoma City, OK,)	
Employer)	
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Appearances:
Appellant, pro se
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 February 20, 2024 appellant filed a timely appeal from September 13, 2023 and January 16, 2024 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated August 5, 2020, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly denied appellant's June 16, 2023 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error; and (2) whether OWCP properly denied appellant's October 30, 2023 request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 21, 2020 appellant, then a 58-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on that date, he sustained an abdominal hernia rupture when pushing wires, over-the-road containers, general purpose containers, and lifting packages while in the performance of duty.

In a return-to-work note dated January 21, 2020, Dr. Ryan Biggers, a physician specializing in family medicine, noted appellant's diagnosis as umbilical hernia of the abdomen wall. He concluded that the condition was due to heavy lifting and restricted appellant from lifting over 15 pounds.

On February 18, 2020 Dr. Biggers reported appellant's diagnoses as right groin pain, right sacroiliac joint pain, and umbilical hernia, noting an onset date of these conditions as January 21, 2020. He opined that these diagnoses were exacerbated by bending, squatting, lifting, and stooping. Dr. Biggers noted his review of appellant's duties and responsibilities and opined that, based on the acuteness of symptoms, examination findings, pathophysiology of the disease(s), and a timeline of injury, "it was determined to be as likely as not related to the manual labor that was required of him to function at his job." He further opined that appellant's conditions were "of direct relation to his time of employment" with the employing establishment.

By decision dated March 14, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between the accepted January 21, 2020 employment incident and his diagnosed conditions.

OWCP continued to receive medical reports from Dr. Biggers and Dr. Alexander Raines, a robotic surgeon, who diagnosed an umbilical hernia.

On May 13, 2020 appellant requested reconsideration.

By decision dated August 5, 2020, OWCP denied modification of its March 14, 2020 decision.

On December 1, 2020 appellant again requested reconsideration. No additional evidence or argument was received.

By decision dated February 10, 2021, OWCP denied appellant's December 1, 2020 request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

In a note dated November 15, 2022, Dr. Biggers recounted that he had seen appellant approximately two years for complaints of abdominal pain. He related that he had diagnosed an umbilical hernia at that time, "as likely as not related to heavy lifting while on the job with [the employing establishment]."

In a note dated March 3, 2023, Dr. Biggers opined that a review of appellant's medical records clearly demonstrated that his diagnosed abdominal injury was sustained while employed at the employing establishment.

On June 16, 2023 appellant again requested reconsideration of the August 5, 2020 decision.

By decision dated September 13, 2023, OWCP denied appellant's June 16, 2023 request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On October 30, 2023 appellant again requested reconsideration of the August 5, 2020 decision.² He alleged that his May 13, 2020 reconsideration request was timely filed. Appellant also enclosed the February 18 and March 25, 2020 reports from Dr. Biggers.

By decision dated January 16, 2024, OWCP denied appellant's October 30, 2023 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

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

² The Board notes that appellant intended to request reconsideration of the September 13, 2023 nonmerit decision. However, OWCP's September 13, 2023 decision explained that the only appeal right available was an appeal to the Board. Therefore, the proper subject of modification is OWCP's August 5, 2020 merit decision.

³ 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).

⁴ 20 C.F.R. § 10.607(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

⁶ *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).

⁷ *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).

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); Federal (FECA) Procedure Manual, *supra* note 5 at Chapter 2.1602.5a (September 2020).

⁹ *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.¹⁰ 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.¹¹

OWCP 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 required further development, is not clear evidence of error.¹² The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹³

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly denied appellant's June 16, 2023 request for reconsideration of the merits of his claim as it was untimely filed and failed to demonstrate clear evidence of error.

Section 10.607(a) of OWCP's regulations provides that a request for reconsideration must be received within one year of the date of OWCP's last merit decision for which review is sought.¹⁴ Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in iFECS.¹⁵

The last merit decision of record was dated August 5, 2020. Appellant's request for reconsideration, however, was not received until June 16, 2023, more than one year after the August 5, 2020 merit decision. Thus, the Board finds that it was untimely filed.

OWCP will consider an untimely request for reconsideration only if it demonstrates clear evidence of error on the part of its most recent merit decision. The request must establish, on its face, that such decision was erroneous.¹⁶

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

¹¹ *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

¹² *Supra* note 7.

¹³ *L.J.*, Docket No. 23-0282 (issued May 26, 2023); *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹⁴ 20 C.F.R. § 10.607(a).

¹⁵ *Supra* note 5 at Chapter 2.1602.4b (September 2020).

¹⁶ *Supra* note 13; *see also Order Remanding Case, C.B.*, Docket No. 17-0933 (issued July 17, 2017); *A.B.*, Docket No. 15-0521 (issued June 13, 2016).

In support of this request for request for reconsideration, OWCP received a note dated November 15, 2022 from Dr. Biggers. In this note, Dr. Biggers related that he had diagnosed appellant's umbilical hernia two years prior "as likely as not related to heavy lifting while on the job at the [employing establishment]." OWCP also received a note dated March 3, 2023, wherein Dr. Biggers concluded that a review of appellant's medical records clearly demonstrated that his diagnosed abdominal injury was sustained while employed at the employing establishment. The Board finds, however, that the submission of these notes do not demonstrate clear evidence of error as they do not raise a substantial question concerning the correctness of OWCP's August 5, 2020 decision, at the time that it was issued.¹⁷ It is not enough merely to show that the evidence could be construed to produce a contrary conclusion.¹⁸ As noted above, even a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have required further development is insufficient to establish clear evidence of error.¹⁹ Consequently, this evidence is insufficient to demonstrate clear evidence of error.

Accordingly, the Board finds that OWCP properly denied appellant's June 16, 2023 request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.²⁰ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.²¹ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.²²

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.²³ When a timely request for reconsideration does not meet at least one of

¹⁷ *C.M.*, Docket No. 23-0958 (issued May 10, 2024).

¹⁸ *W.R.*, Docket No. 24-0244 (issued May 22, 2024); *A.N.*, Docket No. 24-0503 (issued July 15, 2024); *C.M.*, *id.*; *U.C.*, Docket No. 19-1753 (issued June 10, 2020).

¹⁹ *M.W.*, Docket No. 24-0340 (issued May 13, 2024); *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

²⁰ 5 U.S.C. § 8128(a).

²¹ 20 C.F.R. § 10.607.

²² *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

²³ *Id.* at § 10.606(b)(3); *see R.M.*, Docket No. 23-0748 (issued October 30, 2023); *L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.²⁴

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record,²⁵ and the submission of evidence or argument which does not address the particular issue involved, does not constitute a basis for reopening a case.²⁶

ANALYSIS -- ISSUE 2

The Board, having duly considered the matter, finds that this case is not in posture for decision.

Appellant again requested reconsideration of the August 5, 2020 merit decision on October 30, 2023. By decision dated January 16, 2024, OWCP denied his request for reconsideration, pursuant to 5 U.S.C. § 8128(a).

However, the standard utilized by OWCP in its January 16, 2024 decision is appropriate only for timely reconsideration requests. Appellant's request for reconsideration was not received until October 30, 2023, more than one year after the August 5, 2020 merit decision. Thus, the Board finds that it was untimely filed. Because appellant filed an untimely reconsideration request, the case shall be remanded to OWCP for application of the correct standard for reviewing untimely reconsideration requests, which is the clear evidence of error standard.²⁷ Following any further development as deemed necessary, OWCP shall issue an appropriate decision.

CONCLUSION

The Board finds that OWCP properly determined that appellant's June 16, 2023 request for reconsideration was untimely filed and failed to demonstrate clear evidence of error. The Board further finds that OWCP improperly denied his October 30, 2023 request for reconsideration, pursuant to 5 U.S.C. § 8128(a).

²⁴ *Id.* at § 10.608.

²⁵ *J.N.*, Docket No. 23-0974 (issued May 14, 2024); *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

²⁶ *J.N., id.*; *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; 31 ECAB 224, 225 (1979).

²⁷ *See Order Remanding Case, M.D.*, Docket No. 19-1957 (issued June 22, 2021); *Order Remanding Case, E.G.*, Docket No. 19-0236 (issued August 22, 2019).

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed. The January 16, 2024 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 7, 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