

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

A.G., Appellant)	
)	
and)	Docket No. 24-0868
)	Issued: October 21, 2024
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. BORDER PATROL, Edinburg, TX,)	
Employer)	
)	

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
JANICE B. ASKIN, Judge

JURISDICTION

On August 27, 2024 appellant filed a timely appeal from a July 25, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated February 2, 2023, 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.²

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.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 25, 2024 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On December 22, 2022 appellant, then a 36-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on December 13, 2022 he sustained trauma to his left eye when a fleeing suspect hit him on the left eye with his elbow while in the performance of duty. He explained that he began seeing flashes in the periphery view of his left eye. Appellant did not stop work.

In a December 28, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and afforded him 30 days to respond. No response was received.

By decision dated February 2, 2023, OWCP accepted that the December 13, 2022 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted December 13, 2022 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On June 19, 2024 appellant requested reconsideration of the February 2, 2023 decision. He provided a narrative statement asserting that he was involved in a physical altercation with a suspect on December 13, 2022 and that the suspect struck him in the left eye resulting in flashes of light in his peripheral vision and a black floater in the center of the vision field of his left eye. Appellant noted that he was unable to locate an ophthalmologist which accepted payment from OWCP.

By decision dated July 25, 2024, 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.³ 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.⁴ 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).⁵ The Board has found that the imposition of this one-year filing limitation does not constitute an abuse of discretion.⁶

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 2.1602.4b (September 2020).

⁶ *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).

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 of error.⁷ OWCP's regulations and procedures provide that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's request for reconsideration demonstrates clear evidence of error on the part of OWCP.⁸

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 on its face that OWCP committed an error.⁹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁰ 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. 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.¹¹ The Board notes that clear evidence of error is intended to represent a difficult standard.¹² Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹³

ANALYSIS

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

The last merit decision was issued on February 2, 2023. As the most recent request for reconsideration was not received by OWCP until June 19, 2024, more than one year after the February 2, 2023 merit decision, pursuant to 20 C.F.R. § 10.607(a), the Board finds that the request for reconsideration was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in denying the claim.¹⁴

⁷ 20 C.F.R. § 10.607(b); *T.C.*, Docket No. 19-1709 (issued June 5, 2020); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁸ *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 5 at Chapter 2.1602.5a (September 2020).

⁹ 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).

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

¹¹ *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

¹² *R.K.*, Docket No. 19-1474 (issued March 3, 2020).

¹³ *U.C.*, Docket No. 19-1753 (issued June 10, 2020).

¹⁴ 20 C.F.R. § 10.607(b); *S.C.*, Docket No. 20-1537 (issued April 14, 2021); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *see Debra McDavid*, 57 ECAB 149 (2005).

In support of his reconsideration request, appellant submitted a June 19, 2024 narrative statement describing the December 13, 2022 employment incident and his subsequent attempts to obtain medical care. However, the underlying issue of the case is whether appellant provided sufficient medical evidence to establish a diagnosed condition in connection with the accepted December 13, 2022 employment incident. As this issue is medical in nature, it can only be resolved through the submission of probative medical evidence.¹⁵ Therefore, appellant's arguments on reconsideration are insufficient to raise a substantial question concerning the correctness of OWCP's last merit decision. As noted, clear evidence of error is intended to represent a difficult standard.¹⁶ 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.¹⁷ Thus, the evidence is insufficient to demonstrate clear evidence of error.¹⁸

Accordingly, 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.¹⁹

CONCLUSION

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

¹⁵ See *E.W.*, Docket No. 24-0714 (issued August 30, 2024); *W.M.*, Docket No. 18-0565 (issued August 14, 2018); *S.J.*, Docket No. 17-1214 (issued April 16, 2018); *George C. Vernon*, 54 ECAB 319 (2003).

¹⁶ *J.C.*, Docket No. 24-0485 (issued August 26, 2024); *E.L.*, Docket No. 22-0631 (issued October 31, 2022).

¹⁷ *Id.*

¹⁸ *W.R.*, Docket No. 24-0244 (issued May 22, 2024); *B.C.*, Docket No. 24-0022 (issued April 25, 2024); *J.J.*, Docket No. 23-0155 (issued October 5, 2023).

¹⁹ *C.M.*, Docket No. 23-0958 (issued May 10, 2024); *J.B.*, Docket No. 20-0630 (issued April 21, 2021).

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board