

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

S.B., Appellant)	
)	
and)	Docket No. 23-1185
)	Issued: September 4, 2024
U.S. POSTAL SERVICE, EAST ELMHURST)	
POST OFFICE, East Elmhurst, NY, Employer)	
)	

Appearances:
Stephen C. Larkin, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 23, 2023 appellant, through her representative, filed a timely appeal from a July 26, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated April 6, 2022 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.³

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.*

³ The Board notes that, following the July 26, 2023 decision, appellant submitted additional evidence on appeal to the Board. However, the Board's *Rules of Procedures* 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.

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 January 18, 2022 appellant, then a 50-year-old distribution sales clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 24, 2021, she contracted COVID-19 while in the performance of duty. She stopped work on December 28, 2021.⁴

In a March 1, 2022 statement, the employing establishment controverted the claim as appellant had not submitted medical evidence with a diagnosis.

Thereafter, OWCP received a February 16, 2022 work slip by Dr. Swaroopa Chinnappala, a Board-certified internist, wherein she held appellant off work for the period December 28, 2021 through February 28, 2022.

In a development letter dated March 7, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim, and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On March 7, 2022 appellant requested reconsideration. She recounted that on December 23 and 24, 2021 while in the performance of duty, she was exposed to coworkers who tested positive for COVID-19. Appellant tested positive for COVID-19 on December 26, 2021 and notified her acting station manager of the positive test result on January 11, 2022.

By decision dated April 6, 2022, OWCP denied appellant's traumatic injury claim finding that appellant had not established a diagnosis of COVID-19.⁵

Thereafter, OWCP received January 5 and 27, March 7 and 23, and April 12, 2022 reports by Dr. Chinnappala. In the January 5, 2022 report, she recounted that appellant tested positive for COVID-19 on December 26, 2021 using a "home testing kit." In the January 27 and March 7, 2022 reports, Dr. Chinnappala excused appellant from work for the period December 28, 2021 through February 4, 2022, and March 4 through 10, 2022. In the March 23, 2022 report, she recounted that appellant tested positive for COVID-19 on December 26, 2022 and had been advised to quarantine until January 16, 2022. On April 12, 2023 Dr. Chinnappala reported that

⁴ By decision dated January 31, 2022, OWCP denied appellant's claim for continuation of pay (COP), finding that she had not reported her injury on an OWCP-approved form within 30 days of her alleged December 24, 2021 employment injury.

⁵ Under section 4016 of the American Rescue Plan Act (ARPA) of 2021 any claim made for COVID-19 by or on behalf of a "covered employee" for benefits under FECA will be deemed to have an injury proximately caused by exposure to COVID-19 arising out of the nature of the covered employee's employment. Public Law 117-2 (March 11, 2021). *See also* FECA Bulletin Nos. 21-09 (issued April 28, 2021), 21-10 (issued August 17, 2021), and 22-06 (issued February 16, 2022). FECA Bulletin No. 21-10 amended FECA Bulletin No. 21-09 in part to allow for a positive Antigen COVID-19 test result. FECA Bulletin No. 22-06 amended FECA Bulletin Nos. 21-09 and 21-10 to update COVID-19 claims processing guidelines relating to reinfection and home tests.

appellant was under her care since December 26, 2021, and held appellant off work due to long haul effects of COVID-19.

OWCP also received a completed development questionnaire signed by appellant on April 1, 2022, in which she noted that she developed symptoms on December 24, 2021 and tested positive for COVID-19 on December 26, 2021.

On April 27, 2023 appellant, through her representative, requested reconsideration. He contended that appellant had reported the positive COVID-19 test result. Appellant submitted a July 27, 2022 report by Dr. Chinnappala, wherein she recounted that appellant tested positive for COVID-19 on December 26, 2021 using a “home testing kit.”

By decision dated July 26, 2023, OWCP denied appellant’s reconsideration request, 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.⁶ 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.⁷ 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).⁸ The Board has found that the imposition of this one-year filing limitation does not constitute an abuse of discretion.⁹

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 that OWCP’s most recent merit decision was in error.¹⁰ 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 demonstrates clear evidence of error on the part of OWCP.¹¹ In this regard,

⁶ *Supra* note 2 at § 8128(a); *J.B.*, Docket No. 24-0011 (issued March 19, 2024); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁷ 20 C.F.R. § 10.607(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (September 2020).

⁹ *J.B.*, *supra* note 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).

¹⁰ *See* 20 C.F.R. § 10.607(b); *J.B., id.*; *R.S.*, Docket No. 19-0180 (issued December 5, 2019); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

¹¹ *J.B., id.*; *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; *supra* note 8 at Chapter 2.1602.5(a) (September 2020).

OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹²

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.¹³ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁴ 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.¹⁵ 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.¹⁶

ANALYSIS

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.

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 whether appellant established a diagnosis of COVID-19 was OWCP's April 6, 2022 decision. As OWCP received appellant's request for reconsideration on April 27, 2023, more than one year after the April 6, 2022 merit decision, the Board finds that the request was untimely filed.¹⁷ Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in its April 6, 2022 decision.

On reconsideration, OWCP received Dr. Chinnappala's reports dated January 3 through July 27, 2022. These reports, however, fail to manifest on their face that OWCP committed an error in denying the claim.¹⁸ OWCP also received appellant's April 1, 2022 response to the development questionnaire, and her representative's April 27, 2023 argument that appellant had

¹² *J.B., id.; J.M.*, Docket No. 19-1842 (issued April 23, 2020); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

¹³ 20 C.F.R. § 10.607(b); *J.B., id.; B.W.*, Docket No. 19-0626 (issued March 4, 2020); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

¹⁴ *See J.B., id.; G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

¹⁵ *Id.*

¹⁶ *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

¹⁷ *Supra* note 7.

¹⁸ *Id.*

timely reported the positive COVID-19 test result. However, as the underlying issue in the claim is medical in nature, these documents are irrelevant to the claim.¹⁹

Appellant has not submitted evidence sufficient to raise a substantial question as to the correctness of OWCP's decision.²⁰ 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 April 6, 2022 decision and, therefore, OWCP properly denied appellant's request for reconsideration.²¹

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 July 26, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 4, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹⁹ *E.R.*, Docket No. 21-0423 (issued June 20, 2023); *M.P.*, Docket No. 17-0367 (issued March 12, 2018); *Leona N. Travis*, 43 ECAB 227 (1991).

²⁰ *D.D.*, Docket No. 24-0230 (issued June 14, 2024); *L.T.*, Docket No. 21-0844 (issued April 21, 2023).

²¹ *Id.*