

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 August 25, 2017, appellant, then a 28-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a right shoulder strain when he was struck by a customer's vehicle while in the performance of duty. He stopped work on August 28, 2017 and returned on September 2, 2017. OWCP accepted the claim for cervical strain, lumbar strain, right shoulder strain, and superior glenoid labrum lesion of right shoulder, initial encounter. Appellant underwent right shoulder arthroscopy for posterior-inferior tear and subacromial decompression on March 2, 2018. OWCP paid him intermittent wage-loss compensation on the supplemental rolls from October 14, 2017 through August 11, 2018.

On October 7, 2021 appellant filed a notice of recurrence (Form CA-2a) alleging that on May 11, 2021, he sustained a recurrence causally related to his August 25, 2017 employment injury.

In a November 16, 2021 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.

A July 29, 2021 post arthrogram magnetic resonance imaging (MRI) scan of the right shoulder demonstrated postoperative changes compatible with prior inferior labral repair; no recurrent inferior labral defect; and linear defect at the superior labrum accepting intraarticular contrast and propagating from the anterior to the posterior margin worrisome for superior labrum anterior and posterior (SLAP) tear.

In an October 21, 2021 and January 26, 2022 reports, Dr. Gregory Galakatos, a Board-certified orthopedic surgeon, noted that appellant came under his care on April 26, 2021. He related that he had reviewed magnetic resonance imaging (MRI) scans of appellant's right shoulder from November 14, 2017, January 29, 2018, July 19, 2018, and July 29, 2021, which demonstrated right shoulder pathology from his initial injury in 2017. Appellant had elected to proceed with rotator cuff surgery, which was performed on September 23, 2021.

September 23, 2021 hospital records document that Dr. Galakatos performed a right shoulder arthroscopic decompression and acromioplasty, internal debridement of the labral tear and biceps tenotomy.

By decision dated January 27, 2022, OWCP denied appellant's recurrence claim, finding that the medical evidence of record was insufficient to establish disability from work due to a material change/worsening of the accepted work-related conditions.

On October 8, 2024 appellant, through counsel, requested reconsideration. Counsel argued that a new medical report from Dr. Galakatos established a worsening of the accepted conditions, and that causal relationship was established.

In an April 8, 2024 report, Dr. Galakatos noted that appellant was employed as a mail carrier by the employing establishment where his work duties included extensive and repetitive use of his arms at chest level and above with reaching and pulling mail parcels and packages. He explained that extensive conservative therapy, including home exercise, medication, and steroid injection, failed to fix the problem or alleviate the symptoms. He opined that the nature of appellant's work, including the daily repetitive use of his arms at chest level and above with reaching, pulling, and lifting packages, caused appellant's right shoulder injury. Dr. Galakatos explained that repetitive overhead and above shoulder level extended arm weight-bearing activities such as that of appellant's daily work can impinge the supraspinatus tendon, leading to inflammation of the subacromial bursa, weakness of the rotator cuff, and eventually tearing of one or more tendons. He noted that the time off work, the conservative therapy, the surgery, and the extensive postoperative shoulder rehabilitation, were all necessary due to appellant's condition.

By decision dated October 15, 2024, 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.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

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.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 demonstrates clear evidence of error on the part of OWCP.⁸ In this regard,

³ *Supra* note 2 at § 8128(a); *see M.M.*, Docket No. 21-1203 (issued December 22, 2022); *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).

⁷ *See* 20 C.F.R. § 10.607(b); *R.S.*, Docket No. 19-0180 (issued December 5, 2019); *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; *supra* note 5 at Chapter 2.1602.5a (September 2020).

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

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.¹⁰ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹¹ 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.¹² 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.¹³

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁴ The claimant must present evidence, which on its face shows that OWCP made an error.¹⁵ 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.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 noted above, a request for reconsideration must be received within one year of the date of the last merit decision for which review is sought.¹⁷ As appellant's request for reconsideration was not received by OWCP until October 8, 2024, more than one year after issuance of the

⁹ *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).

¹⁰ 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).

¹¹ *See G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

¹² *Id.*

¹³ *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

¹⁴ *Supra* note 5 at Chapter 2.1602.5a (September 2020); *see also J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹⁵ *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

¹⁶ *Id.*

¹⁷ *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, *supra* note 9; *see supra* note 5 at Chapter 2.1602.5a (September 2020); *see also J.S.*, *supra* note 14.

January 27, 2022 merit decision, it was untimely filed. Consequently, he must demonstrate clear evidence of error by OWCP in its January 27, 2022 decision.

On reconsideration, counsel contended that a new medical report from Dr. Galakatos established a worsening of the accepted conditions, and that causal relationship was established. In his April 8, 2024 report, Dr. Galakatos opined that the nature of appellant's work, including repetitive use of his arms at chest level and above with reaching, pulling, and lifting packages, caused his right shoulder condition.

As noted, the term clear evidence of error is intended to represent a difficult standard, the claimant must present evidence which on its face shows that OWCP made an error in its last merit decision.¹⁸ The submission of Dr. Galakatos' April 8, 2024 report does not raise a substantial question concerning the correctness of OWCP's January 27, 2022 merit decision.¹⁹ The Board has held that it is not enough merely to show that the evidence could be construed to produce a contrary conclusion.²⁰ Even a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical evidence requiring further development is insufficient to establish clear evidence of error.²¹

The Board therefore finds that the evidence submitted on reconsideration is insufficient to demonstrate clear evidence of error on the part of OWCP in its January 27, 2022 decision.

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.

¹⁸ *Supra* notes 14, 15, and 16.

¹⁹ *C.M.*, Docket No. 23-0958 (issued May 10, 2024).

²⁰ *W.R.*, Docket No. 24-0244 (issued May 22, 2024); *A.N.*, Docket No. 24-0503 (issued July 15, 2024); *C.M.*, Docket No. 23-0958 (issued May 10, 2024); *U.C.*, Docket No. 19-1753 (issued June 10, 2020).

²¹ *M.W.*, Docket No. 24-0340 (issued May 13, 2024); *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2025
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