

² The Board notes that, following the September 13, 2024 decision, appellant submitted additional evidence to OWCP and 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 caserecord 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 of the merits of her 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.³ The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On November 10, 2021 appellant, then a 58-year-old mail dock clerk, filed an occupational disease claim (Form CA-2) alleging that she developed a lumbar condition due to factors of her federal employment, including repetitively throwing mail into all-purpose containers (APCs), sacking mail weighing up to 70 pounds, pushing containers, keying stations, keying flats, and moving mail with pallet jacks. She noted that she first became aware of her condition on August 21, 2019, and realized its relationship to her federal employment on September 23, 2021. Appellant stopped work on September 24, 2021, and returned to work on September 25, 2021.

By decision dated February 16, 2022, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted factors of her federal employment.

On March 1, 2022 appellant requested a review of the written record by a representative of OWCP's Branch of Hearing and Review.

Following a preliminary review, by decision dated April 27, 2022, OWCP's hearing representative vacated the February 16, 2022 decision, reversed it in part, and remanded the case for additional medical development. The hearing representative directed OWCP to accept the claim for lumbar sprain and further develop the additional diagnosed medical conditions.

By decision dated May 6, 2022, OWCP accepted appellant's claim for lumbar sprain. It also subsequently further developed her claim, which included referring her to a second opinion physician.

By decision dated July 21, 2022, OWCP denied appellant's claim for additional degenerative lumbar conditions as causally related to the accepted factors of her federal employment.

On November 14, 2022, appellant requested reconsideration.

By decision dated December 12, 2022, OWCP denied modification of the July 21, 2022 decision.

³ *Order Remanding Case*, Docket No. 24-0565 (issued August 8, 2024).

On February 27, 2024 appellant requested reconsideration. She submitted a magnetic resonance imaging (MRI) scan of the lumbar spine dated January 26, 2023 and an addendum report dated March 6, 2023 that revealed 25 percent central canal stenosis at L3-4, 50 percent central canal stenosis at L4-5, a combination of osteophyte formation, bulging and ligamentum flavum hypertrophy, possible acute L5-S1 disc herniation, posterior displacement of the right S1 nerve root, which is a change compared to prior study, 25 percent central spinal canal stenosis, 25 percent right lateral recess stenosis and foraminal narrowing.

On January 8, 2024, Dr. Andrew Indresano, a Board-certified orthopedic surgeon, treated appellant for back and leg pain, numbness, and weakness following a work injury. He noted findings on examination of a stooped posture, lumbar paraspinal tenderness to palpation, intact sensation, negative straight leg raises, and pain with range of motion of the lumbar spine. Dr. Indresano diagnosed pain in the lumbar spine, lumbar radiculopathy, lumbar disc displacement, and lumbar spinal stenosis. He opined that appellant failed conservative treatment and recommended a L4-S1 laminectomy.

OWCP subsequently received reports dated February 26, 2024, wherein Dr. Jeffery Fritz, a Board-certified anesthesiologist, noted his treatment of appellant in follow up for lumbar spine pain that radiated down both legs. Dr. Fritz noted that appellant worked as a dock clerk and repetitively opened and closed trailer doors, bended to /lift/push packages and parcels, loaded and unloaded trailers, and moved bulk mail and parcels. He noted a positive orthopedic examination of the lumbar spine and MRI scan findings that confirm an injury to her back, chronic lower back sprain, acute disc injuries, and ligamentum flavum hypertrophy. Dr. Fritz indicated that appellant's conditions were due to chronic low back sprain caused by repetitive performance of her job duties. He explained that inflammation due to the mechanic stress in performing her job duties resulted in increased hypertrophy of the ligamentum flavum. Dr. Fritz noted that appellant was suffering from segmental lumbar instability that resulted in intervertebral disc displacement of the lumbar spine and nerve root impingement due to the weakness and dysfunction caused by the ligamentum flavum hypertrophy. He opined that based on his objective findings, medical evidence and diagnostic imaging, with reasonable medical certainty, her condition was directly related to the mechanical stressors of her repetitive job duties as a dock clerk and caused lumbar strain, intervertebral lumbar disc disorders with radiculopathy, intervertebral lumbar disc degeneration, other lumbar spondylosis with myelopathy, and lumbar spinal stenosis. Dr. Fritz performed a transforaminal epidural steroid injection at L4-5 and L5-S1. In a work capacity evaluation (Form OWCP-5c) dated February 26, 2024, he diagnosed strain of the muscle, tendon, and ligament of the low back and noted that appellant could return to work for four hours a day with restrictions.

By decision dated March 1, 2024, OWCP summarily denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It advised that the evidence submitted did not manifest on its face that OWCP committed error.

Appellant appealed to the Board. By order dated August 8, 2024, the Board set aside the March 1, 2024 decision, finding that OWCP did not discharge its responsibility to set forth findings of facts, and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision that the evidence submitted did not demonstrate clear

evidence of error. The Board remanded the case to OWCP for an appropriate decision providing detailed reasons for accepting or rejecting the request for reconsideration.

OWCP continued to receive additional evidence. In reports dated June 10 and July 22, 2024, Charles Ortega, a physician assistant, noted his treatment of appellant in follow up for a work-related low back injury. He related that appellant had symptoms of overuse and chronic lower back strain, which caused hypertrophy of the ligamentum flavum. Mr. Ortega diagnosed strain of muscle, fascia and tendon of the lower back, intervertebral lumbar disc disorders with radiculopathy, intervertebral lumbar disc degeneration, other lumbar spondylosis with myelopathy, and lumbar spinal stenosis.

In OWCP-5c forms dated June 10 and September 9, 2024, Dr. Fritz diagnosed strain of the muscle, tendon, and ligament of the low back. He returned appellant to light-duty work eight hours a day.

By decision dated September 13, 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.⁴ 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.⁵ Timeliness is determined by the document receipt date, *i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS).⁶ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁷

OWCP may not deny a reconsideration request solely because it was untimely filed. When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error.⁸ If a request demonstrates clear evidence of error, OWCP will reopen the case for merit review.⁹

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by OWCP. The evidence must be positive, precise, and explicit and

⁴ 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).

⁵ 20 C.F.R. § 10.607(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁷ *R.L.*, Docket No. 18-0496 (issued January 9, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁸ *See* 20 C.F.R. § 10.607(b); *G.G.*, Docket No. 18-1074 (issued January 7, 2019); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁹ *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also id.* at § 10.607(b); *supra* note 6 at Chapter 2.1602.5 (September 2020).

must manifest on its face that OWCP committed an error. Evidence that 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 to merely 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.¹⁰

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard and the claimant must present evidence, which on its face shows that OWCP made an error.¹¹ 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.¹² The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹³

ANALYSIS

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

OWCP's regulations¹⁴ and procedures¹⁵ establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.¹⁶ The most recent merit decision was OWCP's December 12, 2022 decision, which denied modification. As OWCP did not receive appellant's request for reconsideration until February 27, 2024, more than one year after the December 12, 2022 merit decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in denying her claim.

In support of her untimely reconsideration request, appellant submitted additional evidence. In a January 8, 2024, report, Dr. Indresano diagnosed pain in the lumbar spine, lumbar radiculopathy, lumbar disc displacement, and lumbar spinal stenosis and recommended an L4-S1 laminectomy. In reports dated February 26, 2024, Dr. Fritz opined that based on his objective

¹⁰ *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

¹¹ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 6 at Chapter 2.1602.5a (September 2020).

¹² *Id.*

¹³ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹⁴ 20 C.F.R. § 10.607(a); *see F.N.*, Docket No. 18-1543 (issued March 6, 2019); *Alberta Dukes*, 56 ECAB 247 (2005).

¹⁵ *Supra* note 6 at Chapter 2.1602.4 (February 2016); *see L.A.*, Docket No. 19-0471 (issued October 29, 2019); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

¹⁶ 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

findings, medical evidence, and diagnostic imaging, with reasonable medical certainty, appellant's condition was directly related to the mechanical stressors of her repetitive job duties as a dock clerk. He diagnosed lumbar strain and additional conditions of intervertebral lumbar disc disorders with radiculopathy, intervertebral lumbar disc degeneration, other lumbar spondylosis with myelopathy, and lumbar spinal stenosis. In OWCP-5c forms dated February 26, June 10, and September 9, 2024, Dr. Fritz diagnosed strain of the muscle, tendon, and ligament of the low back and noted that appellant could return to work with restrictions. Appellant also submitted notes from a physician assistant and MRI scans. However, none of this evidence manifests on its face that OWCP committed an error in denying expansion of the acceptance of the claim.¹⁷

The Board notes that clear evidence of error is intended to represent a difficult standard.¹⁸ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁹ Even 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.²⁰

As noted, evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.²¹ Accordingly, the Board finds that the evidence submitted on reconsideration does not demonstrate clear evidence of error on part of OWCP in its December 12, 2022 decision.

CONCLUSION

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

¹⁷ *J.C.*, Docket No. 20-1250 (issued May 24, 2021); *W.D.*, Docket No. 19-0062 (issued April 15, 2019).

¹⁸ *See supra* note 6 at Chapter 2.1602.5a (September 2020); *see also E.R.*, Docket No. 24-0681 (issued July 29, 2024); *see also K.W.*, Docket No. 19-1808 (issued April 2, 2020); *J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹⁹ *Id.*

²⁰ *Id.*

²¹ 20 C.F.R. § 10.607(a); *J.M.*, Docket No. 23-0603 (issued September 27, 2023); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 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