

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

---

**R.B., Appellant**

**and**

**U.S. POSTAL SERVICE, PROCESSING &  
DISTRIBUTION CENTER, Oklahoma City, OK,  
Employer**

---

**Docket No. 25-0146  
Issued: January 22, 2025**

*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 November 25, 2024, appellant filed a timely appeal from a November 1, 2024 nonmerit decision 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 Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly denied appellant's October 30, 2023 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, 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.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are set forth below.

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 of umbilical hernia of the abdomen wall. He opined that it 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 his diagnosed conditions and the accepted January 21, 2020 employment incident.

OWCP continued to receive medical reports, wherein Dr. Biggers and Dr. Alexander Raines, a Board-certified general 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 prior 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]."

---

<sup>3</sup> Docket No. 24-0350 (issued October 7, 2024).

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. He also resubmitted the January 21, February 18 and March 25, 2020 reports previously of record 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).

On February 20, 2024, appellant filed a timely appeal to the Board from OWCP's September 13, 2023 and January 16, 2024 nonmerit decisions.

By decision dated October 7, 2024, the Board affirmed OWCP's September 13, 2023 decision, finding that appellant's October 30, 2023 reconsideration request was untimely filed. The Board also set aside its January 16, 2024 decision, finding that OWCP had applied the standard for a timely reconsideration request. As such, the Board remanded the case to OWCP for application of the correct clear evidence of error standard for reviewing untimely reconsideration requests.

By decision dated November 1, 2024, OWCP denied appellant's October 30, 2023 request for reconsideration of the merits of his claim, 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.<sup>4</sup> 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.<sup>5</sup> Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).<sup>6</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>7</sup>

---

<sup>4</sup> 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).

<sup>5</sup> 20 C.F.R. § 10.607(a).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

<sup>7</sup> *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).

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.<sup>8</sup> 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.<sup>9</sup> In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.<sup>10</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>14</sup>

### ANALYSIS

The Board finds that OWCP properly denied appellant's October 30, 2023 request for reconsideration of the merits of his claim as it was untimely filed and failed to demonstrate clear evidence of error.

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's September 13, 2023 decision because the Board

---

<sup>8</sup> 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).

<sup>9</sup> *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 6 at Chapter 2.1602.5a (September 2020).

<sup>10</sup> *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).

<sup>11</sup> *J.M.*, Docket No. 22-0630 (issued February 10, 2023); *S.C.*, Docket No. 18-0126 (issued May 14, 2016).

<sup>12</sup> *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

<sup>13</sup> *Supra* note 8.

<sup>14</sup> *L.J.*, Docket No. 23-0282 (issued May 26, 2023); *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

considered that evidence in its October 7, 2024 decision. Findings made in prior Board decisions are res judicata absent any further review by OWCP under section 8128 of FECA.<sup>15</sup>

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.<sup>16</sup> Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in iFECS.<sup>17</sup> The last merit decision of record was dated August 5, 2020. Appellant's request for reconsideration, however, was not received until October 30, 2023, more than one year after the August 5, 2020 merit decision. Thus, it was untimely filed. Consequently, appellant must establish clear evidence of error on the part of OWCP in its August 5, 2020 decision.<sup>18</sup>

In support of his request for reconsideration, appellant resubmitted notes and reports from Dr. Biggers dated from January 21 through March 25, 2020. These notes, however, do not raise a substantial question concerning the correctness of OWCP's August 5, 2020 decision.<sup>19</sup> It is not enough merely to show that the evidence could be construed to produce a contrary conclusion.<sup>20</sup> 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.<sup>21</sup> Consequently, this evidence is insufficient to demonstrate clear evidence of error.

Accordingly, the Board finds that OWCP properly denied appellant's October 30, 2023 request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant's October 30, 2023 request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

---

<sup>15</sup> *J.H.*, Docket No. 22-0981 (issued October 30, 2023); *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *C.H.*, Docket No. 19-0669 (issued October 9, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

<sup>16</sup> 20 C.F.R. § 10.607(a).

<sup>17</sup> *Supra* note 6 at Chapter 2.1602.4b (September 2020).

<sup>18</sup> *Supra* note 14; *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).

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

<sup>20</sup> *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).

<sup>21</sup> *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 November 1, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 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