

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

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<b>R.H., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 21-1405</b>
	)	<b>Issued: July 26, 2022</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Memphis, TN, Employer</b>	)	
	)	

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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 20, 2021 appellant filed a timely appeal from an August 16, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The most recent merit decision was a decision of the Board dated September 9, 2010, which became final after 30 days of issuance, and is not subject to further review.<sup>1</sup> As there is no merit decision issued by OWCP within 180 days from the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 20 C.F.R. § 501.6(d) *see M.S.*, Docket No. 18-0222 (issued June 21, 2018); *J.P.*, Docket No. 17-0053 (issued May 23, 2017); *R.M.*, Docket No. 14-1213 (issued October 15, 2014).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> *S.S.*, Docket No. 21-0627 (issued June 22, 2022); *D.B.*, Docket No. 19-0648 (issued October 21, 2020).

## 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.<sup>4</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 February 2, 2009 appellant, then a 60-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome as well as leg and knee conditions due to factors of her federal employment. She explained that her job processing mail required manipulation, verification and lifting of mail, as well as constant bending, stooping, and standing and exposure to cold work areas. Appellant first became aware of her conditions and their relationship to her federal employment on February 1, 2008.

By decision dated May 5, 2009, OWCP denied the claim because appellant failed to establish the employment factors, she deemed responsible for her condition and, further, the medical evidence did not demonstrate that compensable employment factors caused a medically-diagnosed condition.

On October 13, 2009 appellant timely appealed the May 5, 2009 decision to the Board. By decision dated September 9, 2010, the Board found that she had established the alleged factors of employment. However, the Board affirmed OWCP's May 5, 2009 decision, finding that the medical evidence contained no reasoned discussion of causal relationship, explaining how appellant's employment factors caused or aggravated a diagnosed medical condition. The Board concluded that she had not established that she sustained an injury in the performance of duty causally related to her employment.

On May 21, 2021 appellant requested that OWCP reconsider her claim. OWCP did not receive any other documentation in support of the reconsideration request.

By decision dated August 16, 2021, OWCP 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.

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<sup>4</sup> Docket No. 10-97 (issued September 9, 2010).

## LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right.<sup>5</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>6</sup> One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>7</sup>

OWCP procedures require a review of the file to determine whether the application for reconsideration was received within one year of a merit decision. The one-year period begins on the date of the original decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board, and any merit decision following action by the Board, but does not include prerecoupment hearing decisions.<sup>8</sup> Timeliness is determined by the document receipt date of the reconsideration request, *i.e.*, the received date in the Integrated Federal Employees' Compensation System (iFECS). If the request for reconsideration has a document received date greater than one year, the request must be considered untimely.<sup>9</sup>

OWCP will consider an untimely request for reconsideration only if it demonstrates clear evidence of error on the part of it in its most recent merit decision. The request must establish, on its face, that such decision was erroneous.<sup>10</sup> The term clear evidence of error is intended to represent a difficult standard. If clear evidence of error has not been presented, OWCP should deny the request by letter decision, which includes a brief evaluation of the evidence submitted and a finding made that clear evidence of error has not been shown.<sup>11</sup>

## ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim as it was untimely filed and failed to demonstrate clear evidence of error.<sup>12</sup>

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<sup>5</sup> This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his] own motion or on an application." 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.607.

<sup>7</sup> *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

<sup>8</sup> *Id.* at Chapter 2.1602.4a (September 2020).

<sup>9</sup> *Id.* at Chapter 2.1602.4b (September 2020); *see also S.J.*, Docket No. 19-1864 (issued August 12, 2020); *W.A.*, Docket No. 17-0225 (issued May 16, 2017).

<sup>10</sup> *W.A., id.; D.O.*, Docket No. 08-1057 (issued June 23, 2009); *Robert F. Stone*, 57 ECAB 292 (2005).

<sup>11</sup> *Supra* note 7 at Chapter 2.1602.5a. (September 2020).

<sup>12</sup> *D.B.*, Docket No. 19-0648 (issued October 21, 2020); *R.T.*, Docket No. 20-0298 (issued August 6, 2020).

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 was the Board's September 9, 2010 decision, which affirmed OWCP's May 5, 2009 decision. As OWCP received her request for reconsideration on May 21, 2021, more than one year after the September 9, 2010 merit decision, the Board finds that the request was untimely filed.<sup>13</sup>

The Board further finds that appellant has not demonstrated clear evidence of error. The underlying issue is whether she has submitted sufficient medical evidence to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment. Appellant did not submit any evidence in support of her request for reconsideration. As such, the Board finds that appellant did not submit evidence in support of her request for reconsideration raising a substantial question as to the correctness of the denial of her claim.<sup>14</sup>

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

### CONCLUSION

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

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<sup>13</sup> *Id.*

<sup>14</sup> *See R.T., supra* note 12.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 16, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board