



compensation for the period September 1 to 22, 2016. However, it affirmed the May 7, 2018 decision in part, finding that appellant refused suitable work.

On August 18, 2020 appellant, through her then-counsel, requested reconsideration of OWCP's July 24, 2019 decision.

By decision dated November 16, 2020, OWCP denied appellant's August 18, 2020 request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

The Board finds that this case is not in posture for decision.

Section 8128(a) of the Federal Employees' Compensation Act<sup>1</sup> (FECA) vests OWCP with discretionary authority to determine whether it will review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application.<sup>2</sup> OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, 20 C.F.R. § 10.607(a) provides that a request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>3</sup>

The Federal (FECA) Procedure Manual requires a review of the file to determine whether the 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 decision of OWCP's Branch of Hearings and Review after a hearing or review of the written record, any denial of modification by OWCP following a reconsideration, any merit decision by the Board, and any merit decision following a remand from OWCP's Branch of Hearings and Review or the Board, but does not include prerecoupment hearing decisions.<sup>4</sup> Timeliness is determined by the document receipt date of the reconsideration request (the received date in the Integrated Federal Employees' Compensation System (iFECS)). If the reconsideration request has a document received date greater than one year, the request must be considered untimely.<sup>5</sup>

OWCP will consider an untimely request for reconsideration only if it demonstrates clear evidence of error in its most recent merit decision. The request must establish, on its face, that such decision was erroneous.<sup>6</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>7</sup>

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

<sup>2</sup> *Id.* at § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.607(a).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4a (September 2020).

<sup>5</sup> *Id.* at Chapter 2.1602.4b (September 2020).

<sup>6</sup> 20 C.F.R. § 10.607(b).

<sup>7</sup> *See supra* note 4 at Chapter 2.1602.5a, b (September 2020).

The most recent decision reviewing the merits of appellant's suitable work termination was OWCP's July 24, 2019 decision. Appellant had one calendar year from the date of that decision, or until July 24, 2020, to request reconsideration. OWCP received her reconsideration request on August 18, 2020. As the received date was more than one year after the July 24, 2019 termination decision, appellant's request is untimely.

The proper standard of review for an untimely reconsideration request is the clear evidence of error standard.<sup>8</sup> However, in denying appellant's reconsideration request in its November 16, 2020 decision, OWCP applied the standard of review for timely requests for reconsideration. As OWCP applied an incorrect standard of review, the Board will set aside OWCP's November 16, 2020 decision and remand the case for review under the clear evidence of error standard, followed by an appropriate decision.<sup>9</sup>

**IT IS HEREBY ORDERED THAT** the November 16, 2020 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this order of the Board.

Issued: November 3, 2022  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> *W.L.*, Docket No. 15-1842 (issued January 14, 2016).

<sup>9</sup> *See D.G.*, Docket No. 17-1323 (issued January 2, 2018).