

² The Board notes that, following the March 23, 2021 decision, appellant submitted additional evidence to OWCP. 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. *Id.*

On November 8, 2019 appellant, then a 54-year-old distribution process worker, filed a traumatic injury claim (Form CA-1) alleging that on September 13, 2019 she sustained a rotator cuff tear when “lifting parts” while in the performance of duty. She did not stop work.

In support of her claim, appellant submitted reports of Dr. John Waldrop, a Board-certified orthopedic surgeon, dated October 1 and 15 and November 19, 2019. She also provided physical therapy treatment notes dated November 27 through December 31, 2019.

By decision dated February 25, 2020, OWCP denied appellant’s claim finding that the evidence of record was insufficient to establish that the September 13, 2019 employment incident occurred, as alleged. It concluded, therefore, that she had not met the requirements to establish an injury as defined by the Federal Employees’ Compensation Act (FECA).³

On September 21, 2020 appellant requested reconsideration of the February 25, 2020 decision.

By decision dated October 2, 2020, OWCP denied appellant’s request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. §8128(a).

On February 25, 2021 appellant again requested reconsideration of the February 25, 2020 decision. In support of her request, she submitted a September 18, 2019 report by Dr. Donna Graf, a Board-certified obstetrician and gynecologist; October 9, 2019 and January 7, 2021 reports by Dr. Rakesh B. Patel, a Board-certified diagnostic radiologist; a November 5, 2019 report by Dr. Waldrop; and December 11, 2020 and January 7 and 18, and February 12, 2021 return to work and progress notes by Dr. Nurulhusein Nurbhai, a Board-certified orthopedic surgeon.

Appellant also submitted a letter which described the September 13, 2019 employment incident in detail.

By decision dated March 23, 2021, OWCP denied appellant’s request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board has duly considered this matter and finds that this case is not in posture for decision.⁴

In an appeal request form received on February 25, 2021 appellant requested reconsideration of the February 25, 2020 decision. A request for reconsideration must be received by OWCP within one year of the date of the last merit decision.⁵ One year from the February 25, 2020 OWCP merit decision was February 25, 2021. As appellant’s request for reconsideration

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Order Remanding Case, P.B.*, Docket No. 21-0716 (issued December 10, 2021); *Order Remanding Case, D.F.*, Docket No. 20-0267 (issued June 29, 2020); *Order Remanding Case, C.D.*, Docket No. 17-1074 (issued August 28, 2017).

⁵ 20 C.F.R. § 10.607(a). 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). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsideration*, Chapter 2.1602.4(b) (February 2020).

was received on February 25, 2021, the Board finds that it constituted a timely request for reconsideration.

As the February 25, 2021 request for reconsideration was timely filed, OWCP should have applied the standard applicable to timely reconsideration requests as set forth in 20 C.F.R. § 10.606(b)(3), rather than the more stringent clear evidence of error standard for untimely reconsideration requests set forth in 20 C.F.R. § 10.607(a).⁶ Because it erroneously reviewed the evidence submitted in support of appellant's reconsideration request under the more stringent clear evidence of error standard which applies to untimely filed reconsideration requests, the Board will remand the case to OWCP for application of the standard for reviewing a timely request for reconsideration as set forth at 20 C.F.R. § 10.606(b)(3), to be followed by an appropriate decision.⁷ Accordingly,

IT IS HEREBY ORDERED THAT the March 23, 2021 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: February 13, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁶ *J.H.*, Docket No. 18-1367 (issued July 17, 2019); *R.M.*, Docket No. 17-0473 (issued June 6, 2017); *C.B.*, Docket No. 13-1732 (issued January 28, 2014).

⁷ *Order Remanding Case, L.N.*, Docket No. 19-0170 (issued August 21, 2019).