

¹ The Board notes that, following the September 28, 2021 decision, appellant submitted additional evidence to the Board. 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.*

In a July 31, 2020 development letter, OWCP informed appellant that the evidence it had received was insufficient to establish his claim. It advised him of the type of factual and medical evidence necessary and afforded him 30 days to submit the necessary evidence.

OWCP thereafter received a July 22, 2020 medical report by Dr. Gwendolyn G. McCall, a Board-certified family physician, who noted that appellant related a history of worsening left elbow pain since July 21, 2020. Dr. McCall performed a physical examination and diagnosed medial epicondylitis of the left elbow.

In a report dated August 5, 2020, Dr. Justin Eisel, a Board-certified family physician, noted a date of injury of July 21, 2020 and that appellant was out of work due to left arm pain and limitations. He performed a physical examination and diagnosed left medial epicondylitis.

In an August 11, 2020 response to OWCP's questionnaire, appellant indicated that, after sorting his parcels on the morning of July 21, 2020, he began to feel pain in the inside of his left elbow, which he believed was caused by the repetitive motion of his work duties. He noted that his medical condition may have been a repetitive motion injury and not limited to a single traumatic event. Appellant further related that the pain increased throughout the next day of work on July 22, 2020 and he reported the injury to his supervisor.

In an August 26, 2020 report, Dr. Dana Myers Sauerwein, a Board-certified internist, noted appellant's ongoing complaints and diagnosed left elbow medial epicondylitis.

By decision dated September 2, 2020, OWCP denied appellant's traumatic injury claim, finding that he had not submitted medical evidence establishing causal relationship between his diagnosed conditions and the accepted July 21, 2020 employment incident.

OWCP continued to receive evidence including a September 15, 2020 medical report by Dr. Eisel, who diagnosed medial epicondylitis of the left elbow and opined that the condition was consistent with appellant reaching to retrieve mail parcels during his delivery route.

On October 1, 2020 appellant requested a review of the written record by a representative of OWCP's Branch and Hearings Review. In support of his request, he submitted a September 18, 2020 narrative report by Dr. Eisel who opined that frequent, repetitive grabbing and sorting of letters and packages with the left upper extremity while delivering mail caused appellant's left medial epicondylitis.

By decision dated December 22, 2020, an OWCP hearing representative affirmed the September 2, 2020 decision.

On September 21, 2021 appellant requested reconsideration. He indicated that he had previously requested reconsideration of the December 22, 2020 decision on February 9, 2021. Appellant outlined legal arguments and a summary of his claim, and attached a narrative report by Dr. Anthony Stark, a Board-certified physiatrist dated January 19, 2021.

In his January 19, 2021 narrative report, Dr. Stark opined that sorting and casing letters for three to five hours per day, organizing cased items into delivery tubs, and reaching to make deliveries were the major contributing factors to appellant's medial epicondylitis.

By decision dated September 28, 2021, OWCP determined in its September 28, 2021 decision that appellant requested reconsideration of its September 2, 2020 decision. It denied his reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board, having duly considered the matter, finds that the case is not in posture for decision.

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.² The last merit decision was OWCP's December 22, 2020 decision, in which OWCP's hearing representative affirmed the denial of appellant's traumatic injury claim. OWCP determined in its September 28, 2021 decision that he requested reconsideration of its September 2, 2020 decision outside of the one-year time limitation. The last merit decision, however, was the December 22, 2020 hearing representative's decision. As appellant's request was within one year of the date of the December 22, 2020 hearing representative's decision, it was timely filed.³

OWCP applied the clear evidence of error legal standard in reviewing appellant's request for reconsideration.⁴ This standard is the appropriate standard only for cases in which a reconsideration request is untimely filed.⁵ Therefore, 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.⁶

² 20 C.F.R. § 10.607(a).

³ *Id.*

⁴ *Order Remanding Case, C.D.*, Docket No. 17-1074 (issued August 28, 2017); *Order Remanding Case, A.M.*, Docket No. 16-1250 (issued December 20, 2016).

⁵ *See V.M.*, Docket No. 18-1184 (issued July 10, 2019); *Donna M. Campbell*, 55 ECAB 241 (2004).

⁶ *T.L.*, Docket No. 19-1110 (issued August 11, 2020); *A.K.*, Docket No. 20-0003 (issued June 2, 2020); *Order Remanding Case, J.H.*, Docket No. 18-1367 (issued July 17, 2019); *E.S.*, Docket No. 17-0698 (issued July 14, 2017).

IT IS HEREBY ORDERED THAT the September 28, 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 10, 2023
Washington, DC

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

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

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