

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

	)	
<b>B.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0022</b>
	)	<b>Issued: April 25, 2024</b>
<b>DEPARTMENT OF THE NAVY, NAVAL AIR</b>	)	
<b>STATION PATUXENT RIVER,</b>	)	
<b>Patuxent River, MD, Employer</b>	)	
	)	

*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 October 10, 2023 appellant filed a timely appeal from a May 25, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision on this issue, dated July 21, 2014, 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 over the merits of this case.<sup>2</sup>

---

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

<sup>2</sup> The Board notes that following the May 25, 2023 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 caserecord 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.*

## ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration, 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>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 as follows.

On February 12, 2000 appellant, then a 46-year-old systems accountant, sustained an aggravation of cervical stenosis with myelopathy when he fell, striking his back and head, while in the performance of duty. A February 12, 2000 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated underlying degenerative disc disease, spondylosis, and neural foraminal stenosis at C3-4 through C6-7 with no focal disc herniation. Appellant stopped work on March 6, 2000.<sup>4</sup>

On March 29, 2000 Dr. Thomas Ducker, an attending Board-certified neurosurgeon, performed OWCP-authorized cervical laminar decompression surgery at C3 through C7, cervical microplate reconstruction laminoplasty, and local autograft for laminoplasty.

Appellant received treatment for his cervical condition from Dr. Daniel W. Alexander, an attending chiropractor. In notes dated beginning in April 2000, Dr. Alexander detailed the findings of treatment sessions for the cervical spine, including range of motion findings.

In January 2001 OWCP expanded the acceptance of appellant's claim to include Brown-Sequard Syndrome and myelomalacia of his cervical spine.

In a September 20, 2001 report, Dr. Alexander advised that appellant had no cervical flexion motion and very limited cervical extension motion. Appellant also received treatment from other attending chiropractors, including Dr. Thomas Sievert. In an undated report received by OWCP on October 15, 2002, Dr. Sievert indicated that he initially saw appellant on February 20, 2002 for cervical and thoracic spine symptoms. He noted that unspecified x-rays revealed subluxations at C1 and C2.

Appellant periodically requested reimbursement for medical expenses related to chiropractic care. In a June 11, 2007 letter, R.A., an OWCP claims examiner, advised him that chiropractic care was only authorized under FECA when a spinal subluxation had been diagnosed as evidenced by x-ray evidence. He indicated that OWCP had not received such evidence.

---

<sup>3</sup> Docket No. 05-0232 (issued September 2, 2005); Docket No. 09-1928 (issued January 14, 2010); *order denying petition for recon.*, Docket No. 09-1928 (issued July 9, 2010); Docket No. 13-0128 (issued June 13, 2013); Docket No. 16-0971 (issued July 25, 2016); Docket No. 20-0669 (issued December 16, 2021); Docket No. 21-1327 (issued January 31, 2023).

<sup>4</sup> Appellant received wage-loss compensation on the periodic rolls, effective June 16, 2002.

In a December 5, 2007 report, Dr. Alexander indicated that, after appellant sustained an injury, he was observed to have “a change of the spinal structure or subluxation of the spine at multiple cervical levels.” He advised that appellant received post-injury treatment for multiple cervical subluxations, which helped to limit adhesions and fibrosis after undergoing surgery.

In 2011 appellant requested that OWCP expand the acceptance of his claim to include additional conditions. He asserted that he sustained subluxations of the cervical spine due to his February 12, 2000 employment injury. By decision dated August 5, 2011, OWCP denied appellant’s request to expand the acceptance of his claim to include spinal subluxations. It found that appellant had not submitted medical evidence establishing spinal subluxations causally related to the February 12, 2000 employment injury, as demonstrated by contemporaneous x-rays.

In an undated report received by OWCP on February 28, 2012, Dr. Alexander noted that he had examined and treated appellant in conjunction with Dr. Ducker. He indicated that, in April 2000, appellant was noted to have subluxations at C2 and T2-3, increased neuromusculoskeletal disorders, and a loss in cervical spinal range of motion due to past surgical effects. Dr. Alexander stated, “[t]he findings were noted from [his] symptoms, palpation and x-ray findings, which were reviewed with Dr. Ducker on [April 25, 2000].” He further opined that appellant “had subluxation present when seen in conjunction with Dr. Ducker’s diagnoses and treatment recommendation.”

By decision dated May 11, 2012, OWCP denied modification of its August 5, 2011 decision. On May 25, 2012 appellant requested reconsideration. By decision dated June 6, 2012, OWCP denied his request for reconsideration of the merits of his claim. On June 19, 2012 appellant again requested reconsideration. By decision dated July 23, 2012, OWCP again denied his request for reconsideration of the merits of his claim.

Appellant appealed to the Board and, by decision dated June 13, 2013,<sup>5</sup> the Board affirmed OWCP’s May 11, June 6, and July 23, 2012 decisions. The Board indicated that, although Dr. Alexander had reported that appellant had spinal subluxations, he did not clearly diagnose these subluxations through x-rays from the time of injury.

On May 3, 2014 appellant requested reconsideration of his claim.

By decision dated July 21, 2014, OWCP denied modification.

On February 1, 2016 appellant again requested reconsideration of his claim. By decision dated February 17, 2016, OWCP denied appellant’s request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

Appellant appealed to the Board and, by decision dated July 25, 2016,<sup>6</sup> the Board affirmed OWCP’s February 17, 2016 decision.

---

<sup>5</sup> See *supra* note 3.

<sup>6</sup> *Id.*

On January 11, 2021 OWCP received a letter of the same date, referencing the subject of “request for reconsideration and acceptance of my injury,” in which appellant challenged OWCP’s denial of his claim for additional work-related “upper cervical injuries” and asserted that an attached report from an attending physician supported acceptance of such additional conditions. On January 11, 2021 OWCP also received an October 17, 2020 report wherein Dr. William Chaney, a chiropractor, indicated that Dr. Alexander had “diagnosed by x-ray” subluxations at C1, C2, T2, and T3 after appellant’s “initial neck surgery.” Dr. Chaney advised that appellant’s current treatment consisted of chiropractic spinal manipulation to subluxations of the spine at C1, C2, C4, C5, C6, L4, L5, and S1. He noted, “[appellant’s] upper cervical injury is directly related to the date of injury February 12, 2000.”

On January 18, 2022 OWCP received a January 14, 2022 letter in which appellant requested reconsideration of OWCP’s July 21, 2014 decision denying his claim for expansion of the acceptance of his claim to include additional cervical conditions, including spinal subluxations.

In a January 14, 2022 letter, appellant claimed that OWCP wrongly ignored relevant supporting medical evidence of Dr. Alexander and Dr. Chaney. He maintained that his expansion claim was supported by the October 17, 2020 report of Dr. Chaney.

OWCP received medical reports on January 18, 2022, which had previously been of record, including Dr. Alexander’s December 5, 2007 report and his undated report, which OWCP initially received on February 28, 2012. Appellant also resubmitted copies of previous reconsideration requests, previous decisions of OWCP and the Board, and other administrative documents previously of record. He resubmitted the October 17, 2020 report of Dr. Chaney.

By decision dated May 25, 2023, OWCP denied appellant’s request for reconsideration of OWCP’s July 21, 2014 decision denying his expansion 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>7</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>8</sup> Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees’ Compensation System (iFECS).<sup>9</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>10</sup>

---

<sup>7</sup> 5 U.S.C. § 8128(a); *see also A.B.*, Docket No. 19-1539 (issued January 27, 2020); *W.C.*, 59 ECAB 372 (2008).

<sup>8</sup> 20 C.F.R. § 10.607(a).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

<sup>10</sup> *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

OWCP may not deny a request for reconsideration solely because it was untimely filed. When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error.<sup>11</sup> If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review.<sup>12</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>13</sup> The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.<sup>14</sup> Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.<sup>15</sup> 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 request for reconsideration bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.<sup>16</sup>

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.<sup>17</sup> The claimant must present evidence, which on its face shows that OWCP made an error.<sup>18</sup> Evidence such as a detailed, well-rationalized medical report, which if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.<sup>19</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>20</sup>

---

<sup>11</sup> See 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

<sup>12</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).

<sup>13</sup> *A.A.*, Docket No. 19-1219 (issued December 10, 2019); *J.F.*, Docket No. 18-1802 (issued May 20, 2019); *J.D.*, Docket No. 16-1767 (issued January 12, 2017); *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>14</sup> *J.D.*, Docket No. 19-1836 (issued April 6, 2020); *Leone N. Travis*, 43 ECAB 227 (1999).

<sup>15</sup> *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>16</sup> *T.N.*, Docket No. 18-1613 (issued April 29, 2020).

<sup>17</sup> See *supra* note 9 at Chapter 2.1602.5a (September 2020); see also *J.S.*, Docket No. 16-1240 (issued December 1, 2016).

<sup>18</sup> *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

<sup>19</sup> *Id.*

<sup>20</sup> *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

## ANALYSIS

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

On January 18, 2022 OWCP received a January 14, 2022 letter in which appellant requested reconsideration of OWCP's July 21, 2014 decision denying his request for expansion of the acceptance of his claim to include additional cervical conditions, including spinal subluxations.

As noted above, a request for reconsideration must be received within one year of the date of the last merit decision for which review is sought.<sup>21</sup> As appellant's request for reconsideration was not received by OWCP until January 11, 2021, more than one year after issuance of its July 21, 2014 merit decision denying his expansion claim, it was untimely filed.<sup>22</sup> Consequently, he must demonstrate clear evidence of error by OWCP in its July 21, 2014 decision.<sup>23</sup>

In connection with his untimely reconsideration request, appellant discussed his belief that the evidence of record established spinal subluxations causally related to the accepted February 12, 2000 employment injury. He claimed that OWCP violated FECA and its regulations by denying his request that the acceptance of his claim be expanded to include additional conditions. Appellant argued that OWCP had ignored medical reports from his chiropractors, which demonstrated that he sustained work-related spinal subluxations. He asserted that the chiropractic reports of Dr. Alexander and Dr. Chaney established his expansion claim. Appellant submitted medical reports, which OWCP previously considered, including Dr. Alexander's December 5, 2007 report, and his undated report, which OWCP initially received on February 28, 2012. These reports indicated that appellant sustained cervical subluxations without identifying specific x-ray findings contemporaneous to the February 12, 2000 employment injury. Appellant submitted an October 17, 2020 report, wherein Dr. Chaney advised that, on an unspecified date or dates, Dr. Alexander had "diagnosed by x-ray" subluxations at C1, C2, T2, and T3. Appellant also resubmitted copies of previous reconsideration requests, previous decisions of OWCP and the Board, and other administrative documents previously of record.

The Board notes that clear evidence of error is intended to represent a difficult standard.<sup>24</sup> Appellant merely argued that the previously submitted medical evidence of record was sufficient to establish his expansion claim. Therefore, the Board finds that appellant's request for reconsideration does not show on its face that OWCP committed error in its July 21, 2014 decision.

---

<sup>21</sup> See *supra* note 12.

<sup>22</sup> See *id.*

<sup>23</sup> See *supra* notes 13 and 14.

<sup>24</sup> See *supra* note 12.

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

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 25, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2024  
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