

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

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**J.F., Appellant** )

**and** )

**U.S. POSTAL SERVICE, POST OFFICE,** )  
**Houston, TX, Employer** )

**Docket No. 24-0883**  
**Issued: December 2, 2024**

*Appearances:*  
*Joyce Fuller, for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On August 26, 2024 appellant, through his representative, filed a timely appeal from a July 17, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated April 22, 2002, to 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 to review the merits of this case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

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

<sup>3</sup> The Board notes that appellant submitted evidence and argument on appeal. However, the Board's *Rules of Procedure* provide: "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.*

## 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 as presented in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On August 10, 2000 appellant, then a 36-year-old mail processor, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right shoulder injury, clavicle strain, and right rotator cuff injury on August 9, 2000 when a coworker tapped him on the shoulder, causing him to "go to his knees" while in the performance of duty.<sup>5</sup>

By merit decisions dated November 22, 2000, May 21, 2001, and April 22, 2002, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish that the diagnosed conditions were causally related to the accepted August 9, 2000 employment incident.

Following the April 22, 2002 merit decision, appellant continued to request reconsideration of the merits of his claim. OWCP denied his requests for reconsideration, and he filed appeals to the Board. By decision dated May 20, 2019, the Board affirmed an August 29, 2018 OWCP nonmerit decision, finding that appellant's reconsideration request was untimely filed, and failed to demonstrate clear evidence of error.<sup>6</sup>

On November 30, 2020 appellant, through his representative, again requested reconsideration, contending that there were administrative delays by OWCP after the Board issued its May 20, 2019 decision. Appellant's representative further contended that the evidence submitted on reconsideration demonstrated clear evidence of error as it included an unsigned case note's initial assessment dated August 22, 2000, which stated that appellant had been tapped on

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<sup>4</sup> Docket No. 22-0572 (issued September 20, 2022); Docket No. 21-0407 (issued November 10, 2021); Docket No. 18-1802 (issued May 20, 2019); *Order Dismissing Appeal* in Docket No. 20-1433 and *Dismissing Petition for Reconsideration* in Docket No. 18-1802, Docket Nos. 20-1433 & 18-1802 (issued August 28, 2020); Docket No. 18-1802 (issued May 20, 2019); Docket No. 18-0250 (issued July 6, 2018); Docket No. 16-0871 (issued June 10, 2016); Docket No. 14-1589 (issued November 24, 2014); Docket No. 12-1749 (issued February 5, 2013), *petition for recon. denied*, Docket No. 12-1749 (issued August 2, 2013); Docket No. 10-2378 (issued August 16, 2011), *petition for recon. denied*, Docket No. 10-2378 (issued February 23, 2012); Docket No. 09-1027 (issued December 17, 2009), *petition for recon. denied*, Docket No. 09-1027 (issued May 6, 2010); Docket No. 08-271 (issued June 20, 2008); *Order Dismissing Appeal and Cancelling Oral Argument*, Docket No. 07-978 (issued August 17, 2007); Docket No. 04-2283 (issued December 21, 2005).

<sup>5</sup> OWCP assigned the current claim OWCP File No. xxxxxx559. The record indicates that appellant also has a claim for a May 3, 2000 traumatic injury under OWCP File No. xxxxxx590, accepted for right shoulder strain; and a claim for a September 18, 1991 traumatic injury accepted for left elbow lateral epicondylitis, left shoulder adhesive capsulitis, left brachial plexus lesions, left tenosynovitis of the hand/wrist and sprain/strains of the right shoulder, upper arm and acromioclavicular joint under. Appellant's claims have been administratively combined by OWCP with OWCP File No. xxxxxx559 serving as the master file.

<sup>6</sup> Docket No. 18-1802 (issued May 20, 2019).

the shoulder on August 9, 2000, after a previous injury to the same shoulder. Appellant's diagnosis was listed as right shoulder rule out rotator cuff. OWCP also received: a copy of appellant's Form CA-1; copies of OWCP's May 21, 2001, October 1, 2002, and August 29, 2018 decisions; a partial copy of the Board's May 20, 2018 decision; copies of appellant's requests for reconsideration dated June 3, 2019, March 23, 2020, and July 20, 2020; OWCP's August 10, 2020 acknowledgement letter; the Board's November 8, 2020 letter regarding its lack of jurisdiction over Board Docket Nos. 20-1433 and 18-1802; and two USPS Tracking forms showing delivery dates.

By decision dated December 29, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim, finding that it was untimely filed, and failed to demonstrate clear evidence of error.

Appellant appealed the December 29, 2020 decision to the Board.

OWCP thereafter received a March 18, 2021 magnetic resonance imaging (MRI) scan of appellant's left shoulder and a March 23, 2021 MRI scan of his left elbow.

By order dated November 10, 2021, the Board set aside OWCP's December 29, 2020 decision.<sup>7</sup> The Board found that OWCP had summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.<sup>8</sup> The Board remanded the case for findings of fact and a statement of reasons, to be followed by an appropriate decision on appellant's reconsideration request.

By decision dated February 15, 2022, OWCP again denied appellant's November 30, 2020 request for reconsideration, finding that the request was untimely filed and failed to demonstrate clear evidence of error.

Appellant appealed the February 15, 2022 decision to the Board.

By decision dated September 20, 2022, the Board affirmed OWCP's February 15, 2022 decision, finding that appellant's request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.<sup>9</sup>

On July 12, 2024 appellant, through his representative, requested reconsideration. In her July 9, 2024 letter, appellant's representative argued that neither appellant's statements, nor the statement on the Form CA-1 from B.C., Human Resource Specialist, that the current claim appeared to be an aggravation of appellant's open/accepted claim, were considered in OWCP's November 22, 2000 decision, and thus established clear evidence of error. Appellant's representative also noted that the September 18, 2000 medical report of Dr. Gary M. Gartsman, a Board-certified orthopedic surgeon, was not mentioned or considered in OWCP's November 22, 2000 merit decision, and as Dr. Gartsman established fact of injury, clear evidence of error has been established. She additionally contended that Dr. Gartsman's report also established the

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<sup>7</sup> *Order Remanding Case*, Docket No. 21-0407 (issued November 10, 2021).

<sup>8</sup> *M.D.*, Docket No. 20-0868 (issued April 28, 2021); *T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607.

<sup>9</sup> Docket No. 22-0572 (issued September 20, 2022).

causal relationship component of the claim. Copies of medical evidence, including Dr. Gartsman's September 18, 2000 report, August 23, 2000 return-to-work note, and prior decisions previously of record were submitted.

By decision dated July 17, 2024, OWCP denied appellant's July 12, 2024 request for reconsideration, finding that the request 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>10</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>11</sup> Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).<sup>12</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>13</sup>

When a request for reconsideration is untimely, OWCP undertakes a limited review to determine whether the request demonstrates clear evidence that OWCP's most recent merit decision was in error.<sup>14</sup> OWCP's procedures provide that it will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the claimant's request for reconsideration demonstrates "clear evidence of error" on the part of OWCP.<sup>15</sup> In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.<sup>16</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>17</sup> The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error. 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

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<sup>10</sup> 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

<sup>11</sup> 20 C.F.R. § 10.607(a).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

<sup>13</sup> *W.B.*, Docket No. 23-0473 (issued August 29, 2023); *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>14</sup> *See* 20 C.F.R. § 10.607(b); *R.C.*, Docket No. 21-0617 (issued August 25, 2023); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

<sup>15</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); *supra* note 12 at Chapter 2.1602.5 (September 2020).

<sup>16</sup> *S.D.*, Docket No. 23-0626 (issued August 24, 2023); *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>17</sup> *J.M.*, Docket No. 22-0630 (issued February 10, 2023); *S.C.*, Docket No. 18-0126 (issued May 14, 2016).

submitted with the reconsideration request bears on the evidence previously of record, and whether the new evidence demonstrates clear error on the part of OWCP.<sup>18</sup>

OWCP procedures note that the term clear evidence of error is intended to represent a difficult standard. 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>

### ANALYSIS

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.

In the July 12, 2024 request for reconsideration, appellant's representative contended that clear evidence of error was established with regard to the fact of injury component of the claim, noting that OWCP failed to mention statements from appellant and B.C., and further did not consider Dr. Gartsman's November 22, 2000 medical report in its November 22, 2000 decision. To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>21</sup> This argument is irrelevant to the underlying issue of causal relationship, the basis upon which the claim had been denied. While Dr. Gartsman's November 22, 2000 report was not mentioned in OWCP's November 22, 2000 decision, the Board notes that this report was reviewed in the hearing representative's May 21, 2001 decision. However, contrary to appellant's representative's contention that Dr. Gartsman's report established the causal relationship component of his claim, OWCP's hearing representative clearly determined that Dr. Gartsman's report was of diminished probative value. The Board thus finds that the submission of Dr. Gartsman's reports does not establish clear evidence of error, as they do not raise a substantial question concerning the correctness of OWCP's decision.<sup>22</sup> It is not enough merely to show that the evidence could be construed to produce a contrary conclusion.<sup>23</sup> Even a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical evidence requiring further development is insufficient to establish clear evidence of error.<sup>24</sup>

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<sup>18</sup> *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *Robert G. Burns*, *supra* note 16.

<sup>19</sup> *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 12 at Chapter 2.1602.5(a) (September 2020).

<sup>20</sup> *L.J.*, Docket No. 23-0282 (issued May 26, 2023); *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

<sup>21</sup> *I.L.*, Docket No. 21-1146 (issued January 31, 2022); *A.A.*, Docket No. 19-1219 (issued December 10, 2019); *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>22</sup> *C.M.*, Docket No. 23-0958 (issued May 10, 2024).

<sup>23</sup> *W.R.*, Docket No. 24-0244 (issued May 22, 2024); *A.N.*, Docket No. 24-0503 (issued July 15, 2024); *C.M.*, Docket No. 23-0958 (issued May 10, 2024); *U.C.*, Docket No. 19-1753 (issued June 10, 2020).

<sup>24</sup> *M.W.*, Docket No. 24-0340 (issued May 13, 2024); *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

Accordingly, 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.

**CONCLUSION**

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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 17, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2024  
Washington, DC

Alec J. Koromilas, 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