

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

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<b>K.P., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 23-0979</b>
	)	<b>Issued: February 16, 2024</b>
<b>U.S. POSTAL SERVICE, MEADOWBROOK</b>	)	
<b>POST OFFICE, Birmingham, AL, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REVERSING CASE**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

On July 13, 2023 appellant filed a timely appeal from March 22 and April 25, 2023 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0979.<sup>1</sup>

On September 23, 2020 appellant, then a 48-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on September 21, 2020 she injured her left shoulder and left thumb when steering a tractor trailer while in the performance of duty.

By decision dated November 3, 2020, OWCP accepted that the September 21, 2020 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that she had not submitted medical evidence containing a diagnosis in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

On November 10, 2020 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on February 18, 2021.

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<sup>1</sup> The Board notes that, following the April 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 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.*

By decision dated May 5, 2021, OWCP's hearing representative modified the November 3, 2020 decision, finding that the medical evidence of record was sufficient to establish the diagnoses of strain of muscle, fascia, and tendon at the shoulder and upper left arm, radiculopathy, weakness of the left shoulder and wrist, left shoulder sprain, muscle spasm, and left wrist pain. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted September 21, 2020 employment incident.

On September 22, 2021 appellant requested reconsideration. On November 5, 2021 Dr. Jeffrey Cusmariu, a Board-certified orthopedic surgeon, performed a left shoulder arthroscopic labral repair, arthroscopic extensive intra-articular, subacromial and subdeltoid bursectomy/debridement, and arthroscopic debridement rotator cuff with arthroscopic rotator cuff tear. He diagnosed left shoulder pain, left shoulder type II superior labrum anterior and posterior tear, and left shoulder calcific rotator cuff tendinitis.

By decision dated December 21, 2021, OWCP denied modification of the May 5, 2021 decision.

OWCP received diagnostic studies dated November 1 through 6, 2021, reports dated September 8, November 4 and 5, and December 21, 2021, and January 11 and February 8, 2022, by Dr. Cusmariu.

On April 26, 2022 appellant requested reconsideration of OWCP's December 21, 2021 decision. The evidence submitted in support of the reconsideration request included reports dated December 31, 2021 through January 24, 2023 from Dr. Robert Agee, a Board-certified family practitioner; reports dated September 20, 2022 and March 13, 2023 from Dr. Mathew W. Parker, Board-certified in family medicine; and magnetic resonance imaging scans of the left wrist, left shoulder, and left hand dated December 2, 2022.

In an October 18, 2022 memorandum of telephone call (Form CA-110), appellant requested the status of her request for reconsideration. In a response letter of even date, OWCP advised her that her "request for reconsideration received on September 22, 2021" was addressed in its decision issued on December 21, 2021 and enclosed a copy of that decision.

On January 13, 2023 appellant again requested reconsideration of OWCP's December 21, 2021 decision.

By decision dated March 22, 2023, OWCP denied appellant's January 13, 2023 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On April 13, 2023 appellant continued to request reconsideration of OWCP's December 21, 2021 decision.<sup>2</sup> In support of the reconsideration request, she submitted a report from Dr. Agee dated December 31, 2021.

By decision dated April 25, 2023, OWCP denied appellant's April 13, 2023 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

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<sup>2</sup> *Id.*

The Board finds that OWCP improperly denied appellant's request for reconsideration as untimely filed and failing to demonstrate clear evidence of error.

Following OWCP's issuance of its December 21, 2021 merit decision, appellant initially filed a request for reconsideration on April 26, 2022 and submitted medical evidence neither previously of record nor reviewed by OWCP. Section 10.607(a) of OWCP's implementing regulations provides that a request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>3</sup> Herein, the last merit decision was OWCP's December 21, 2021 decision. Appellant's initial request for reconsideration was received on April 26, 2022, within one year of the December 21, 2021 merit decision. The Board therefore finds that her April 26, 2022 request for reconsideration of OWCP's December 21, 2021 decision was timely filed.

Since OWCP erroneously reviewed the evidence submitted in support of appellant's reconsideration request under the more stringent clear evidence of error standard, the Board will reverse OWCP's March 22 and April 25, 2023 decisions, and remand the case to apply the proper standard for timely requests for reconsideration, to be followed by an appropriate decision. Accordingly,

**IT IS HEREBY ORDERED THAT** the April 25 and March 22, 2023 decisions of the Office of Workers' Compensation Programs are reversed, and the case is remanded for further proceedings consistent with this order of the Board.

Issued: February 16, 2024  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>3</sup> 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).