

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

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**J.B., Appellant**

**and**

**DEPARTMENT OF JUSTICE, FEDERAL  
BUREAU OF INVESTIGATION,  
Los Angeles, CA, Employer**

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**Docket No. 24-0011  
Issued: March 19, 2024**

*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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On October 5, 2023 appellant filed a timely appeal from an August 3, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated July 11, 2022, 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>

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

<sup>2</sup> The Board notes that following the August 3, 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.*

## **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**

On March 6, 2006 appellant, then a 44-year-old special agent, filed an occupational disease claim (Form CA-2) alleging that she developed left elbow pain due to factors of her federal employment, including packing and moving boxes and equipment on January 10, 2006. She noted that she first became aware of her condition on January 11, 2006 and realized its relationship to factors of her federal employment on February 15, 2006. Appellant did not stop work. OWCP accepted her claim for left lateral epicondylitis. On February 12, 2007 appellant underwent OWCP-approved surgery and stopped work. OWCP paid her wage-loss compensation on the supplemental rolls from February 12 through March 9, 2007.

On May 23, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In an undated letter, appellant requested that OWCP reopen her left elbow injury with date of injury of January 11, 2006 because she still had residual symptoms associated to this injury.

In a development letter dated June 7, 2022, OWCP informed appellant of the deficiencies of her schedule award claim. It requested that she submit a detailed narrative medical report from her treating physician based upon a recent examination that included whether she had reached maximum medical improvement (MMI), the diagnosis upon which the impairment rating was based, a detailed description of any preexisting impairment, and a final rating of the permanent impairment, with references to the applicable criteria and tables of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>3</sup>

By decision dated July 11, 2022, OWCP denied appellant's schedule award claim, finding that she had not established permanent impairment of a scheduled member or function of the body in accordance with the A.M.A., *Guides*.

On July 17, 2023 appellant requested reconsideration.

By decision dated August 3, 2023, OWCP denied appellant's reconsideration request, 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>4</sup> To be entitled to a merit review of an OWCP decision, a request for reconsideration

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>4</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).

must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>5</sup> 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).<sup>6</sup> The Board has found that the imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>7</sup>

OWCP may not deny a request for reconsideration solely because it was untimely filed. When a request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether the request demonstrates clear evidence that OWCP's most recent merit decision was in error.<sup>8</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 demonstrates clear evidence of error on the part of OWCP.<sup>9</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>10</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue decided by OWCP. The evidence must be positive, precise, and explicit, and it must manifest on its face that OWCP committed an error.<sup>11</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>12</sup> This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record, and whether the new evidence demonstrates clear evidence of error on the part of OWCP.<sup>13</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP such that it abused its discretion in denying merit review in the face of such evidence.<sup>14</sup>

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<sup>5</sup> 20 C.F.R. § 10.607(a).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (September 2020).

<sup>7</sup> *G.G.*, Docket No. 18-1074 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>8</sup> *See* 20 C.F.R. § 10.607(b); *R.S.*, Docket No. 19-0180 (issued December 5, 2019); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

<sup>9</sup> *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010); *see also id.* at § 10.607; *supra* note 6 at Chapter 2.1602.5(a) (September 2020).

<sup>10</sup> *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>11</sup> 20 C.F.R. § 10.607(b); *B.W.*, Docket No. 19-0626 (issued March 4, 2020); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

<sup>12</sup> *See G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

<sup>13</sup> *Id.*

<sup>14</sup> *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

The Board has held that a claimant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.<sup>15</sup> When a claim has requested reconsideration and has submitted new and relevant evidence with respect to a permanent impairment or an increased permanent impairment, then he or she will be entitled to a merit decision on the issue.<sup>16</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.

Preliminarily, the Board finds that OWCP did not receive additional evidence of permanent impairment with appellant's July 17, 2023 request for reconsideration. The Board will, therefore, consider this a reconsideration request as opposed to a claim for an increased schedule award.<sup>17</sup>

OWCP's regulations<sup>18</sup> and procedures<sup>19</sup> establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case. A right to reconsideration within one year also accompanies any subsequent merit decision on the issue.<sup>20</sup> The most recent merit decision pertaining to the denial of appellant's schedule award claim was dated July 11, 2022. OWCP received her request for reconsideration on July 17, 2023. As OWCP received her request for reconsideration more than one year after the July 11, 2022 decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in denying her schedule award claim.<sup>21</sup>

The Board finds that appellant has not demonstrated clear evidence of error. As noted, to establish clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by OWCP.<sup>22</sup> Appellant, however, did not submit medical evidence with her request for reconsideration.

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<sup>15</sup> *R.D.*, Docket No. 18-0579 (issued September 14, 2018); *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

<sup>16</sup> See *C.W.*, Docket No. 18-1110 (issued December 28, 2018); *Linda T. Brown*, 51 ECAB 115 (1999); *Paul R. Reedy*, 45 ECAB 488 (1994); see also *B.K.*, 59 ECAB 228 (2007).

<sup>17</sup> See *B.P.*, Docket No. 22-0553 (issued October 21, 2022); *P.D.*, Docket No. 18-0962 (issued September 18, 2019).

<sup>18</sup> 20 C.F.R. § 10.607(a); see also *F.N.*, Docket No. 18-1543 (issued March 6, 2019); *Albert Dukes*, 56 ECAB 247 (2005).

<sup>19</sup> *Supra* note 6 at Chapter 2.1602.4 (September 2020); see also *L.A.*, Docket No. 19-0471 (issued October 29, 2019); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

<sup>20</sup> 20 C.F.R. § 10.607(b); *A.P.*, Docket No. 21-1222 (issued February 9, 2023); see also *Debra McDavid*, 57 ECAB 149 (2005).

<sup>21</sup> 20 C.F.R. § 10.607(b); see *W.H.*, Docket No. 23-0473 (issued August 29, 2023).

<sup>22</sup> *Supra* note 11.

As appellant's request for reconsideration was untimely filed and did not demonstrate on its face that OWCP committed an error in denying her schedule award claim, the Board finds that OWCP properly determined that her July 17, 2023 request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.<sup>23</sup>

### **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 August 3, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2024  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

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

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<sup>23</sup> *O.K.*, Docket No. 21-708 (issued September 29, 2021); *S.C.*, Docket No. 19-1424 (issued September 15, 2020).