

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

S.M., Appellant)	
)	
and)	Docket No. 25-0215
)	Issued: April 4, 2025
U.S. POSTAL SERVICE, BULK MAIL)	
CENTER, Forest Park, IL, Employer)	
)	

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 December 23, 2024 appellant filed a timely appeal from an October 17, 2024 merit decision and September 3 and November 8 and 19, 2024 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a recurrence of the need for medical treatment beginning February 28, 1989 causally related to his accepted employment injury; (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim for a recurrence of total disability, finding that it was untimely filed and failed to demonstrate clear evidence of error; and (3) whether OWCP properly denied appellant's

¹ 5 U.S.C. § 8101 *et seq.*

requests for reconsideration of the merits of his claim for a recurrence of the need for medical treatment, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decisions and orders are incorporated herein by reference. The relevant facts are as follows.

On September 30, 1987 appellant, then a 28-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he sustained left carpal tunnel syndrome causally related to factors of his federal employment. OWCP accepted the claim for left carpal tunnel syndrome. Appellant stopped work on October 9, 1987.

On July 6, 1988 the employing establishment offered appellant a position as a modified custodian. The position required intermittent standing and walking, lifting no more than 10 pounds, and occasional reaching above the shoulder level. The duties of the position included cleaning tables and chairs in the lunchroom and spot sweeping bathroom floors.

On November 16, 1988 Dr. James D. Schlenker, an attending Board-certified surgeon, found that appellant could return to the described duties full-time effective October 31, 1988.

Appellant returned to work on November 4, 1988 as a modified custodian.

In a report dated February 24, 1989, Dr. Schlenker discussed appellant's history of carpal tunnel syndrome treated with a left carpal tunnel release. He advised that a sensory examination of the left hand yielded normal findings with two-point discrimination of five millimeters and further found full range of motion of the fingers, wrist, elbow, and shoulder. Dr. Schlenker related that appellant had some loss of strength in his left hand. In an addendum, he noted that electrodiagnostic testing had yielded findings within normal limits for each nerve on both sides. Dr. Schlenker opined that appellant had "recovered completely from his carpal tunnel syndrome on the left side."

On March 1, 1989 the employing establishment denied appellant's request for reassignment to a different work schedule.

² Docket Nos. 24-0610 & 24-0611 (issued July 1, 2024); Docket No. 23-0908 (issued January 10, 2024); Docket No. 21-1232 (issued April 8, 2022); Docket No. 19-1961 (issued January 28, 2021); Docket No. 18-0075 (issued April 11, 2018); Docket No. 16-0270 (issued April 26, 2016); Docket No. 15-0426 (issued April 20, 2015); Docket No. 14-0759 (issued July 1, 2014); *Order Remanding Case*, Docket No. 13-1383 (issued December 16, 2013); Docket No. 12-0174 (issued July 25, 2012); *Order Denying Petition for Reconsideration*, Docket No. 10-2320 (issued January 25, 2012); Docket No. 10-2320 (issued July 19, 2011); *Order Denying Petition for Reconsideration*, Docket No. 09-0151 (issued April 13, 2010); Docket No. 09-0151 (issued October 21, 2009); Docket No. 04-0757 (issued May 2, 2005); *Order Granting Petition for Reconsideration*, Docket No. 02-1467 (issued December 16, 2002); *Order Remanding Case*, Docket No. 02-1209 (issued October 28, 2002); Docket No. 02-1032 (issued October 22, 2002); *Order Denying Petition for Reconsideration*, Docket No. 97-0670 (issued August 19, 1999); Docket No. 97-0670 (issued March 10, 1999); Docket No. 90-0321 (issued April 5, 1990).

Appellant stopped work again on March 16, 1989 and informed the employing establishment that he would not return unless he was placed back on his original tour schedule and preferably in his craft.³

On February 17, 1991 Dr. Timothy Norton, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), found that appellant could perform the modified position as set forth, but that additional duties like washing sinks and cleaning toilets would require too much repetitive movement.

On May 2, 1991 the employing establishment advised that it had not assigned him additional duties, rather, it had only assigned him the duties provided in the July 6, 1988 job offer. It asserted that appellant had stopped work because he did not like his shift hours.

By decision dated July 6, 1992, OWCP denied appellant's claim for total disability from work commencing March 16, 1989. It found that the employing establishment had provided him with work within his restrictions, but that he stopped work for reasons unrelated to his employment injury.

By decisions dated August 15, 1994 and October 27, 1995, OWCP denied modification.

In a statement dated May 13, 1996, J.W., a manager with the employing establishment, advised that appellant had resumed modified employment on November 6, 1988, but stopped work on March 16, 1989 and requested that he be placed back on his original duty tour and original craft. J.W. noted that he was now contending that he stopped work due to his medical condition. He asserted that appellant was not entitled to compensation based on his refusal or neglect of suitable employment.

By decision dated August 10, 1996, OWCP modified the October 27, 1995 decision to find that appellant had performed duties not specifically approved by his physician. It noted, however, that there was no evidence supporting that these duties exceeded the restrictions set forth by Dr. Schlenker. OWCP further found that the medical evidence of record was insufficient to establish that appellant was disabled from work commencing March 16, 1989 causally related to his accepted employment injury.

Appellant subsequently submitted multiple requests for reconsideration, which were denied. By decision dated March 10, 1999, the Board affirmed the August 10 and November 13, 1996 OWCP decisions,⁴ finding that appellant had not established that his duties included working outside of his restrictions. The Board further found that the medical evidence of record was insufficient to establish that he was disabled from work commencing March 16, 1989.

On February 11, 2024 appellant filed a notice of recurrence (Form CA-2a) alleging that on February 28, 1989 he sustained a recurrence of the need for medical treatment causally related to his accepted September 10, 1987 employment injury. He related that he had worked with

³ On September 14, 1989 the employing establishment removed him from employment effective June 9, 1989 for unauthorized absence since March 1989.

⁴ Docket No. 97-670 (issued March 10, 1999).

restrictions from November 5, 1988 through March 16, 1989, when he abandoned his position. Appellant asserted that he had performed work duties not cleared by his physician.

On February 20, 2024 appellant requested reconsideration of an unspecified decision. On February 22, 2024 OWCP requested that appellant specify the date of the decision that he wanted reconsidered. It informed him that no further action would be taken pending clarification. On February 29, 2024 appellant specified that he was requesting reconsideration of the August 10, 1996 decision.

Appellant subsequently submitted additional medical evidence. In an August 10, 1989 report, Dr. Schlenker indicated that repetitive work activities would aggravate appellant's condition. On September 13, 1990 he advised that appellant could perform modified work avoiding repetitive activities to prevent triggering his carpal tunnel symptoms. In a September 14, 1990 report, Dr. Schlenker diagnosed nonspecific synovitis involving the flexor tendons of both wrists aggravated by repetitive activities. He opined that appellant should avoid repetitive activities. In a report dated February 21, 1996, Dr. Schlenker advised that appellant had some residual symptoms of median neuropathy but that it was unclear whether this represented a recurrence of his carpal tunnel syndrome and, even if it was a recurrence, questioned whether it was caused by his work duties. Appellant also resubmitted an August 14, 2019 report from Dr. Salman Chaudri, an osteopath, finding that repetitive work duties would likely aggravate his condition.

By decision dated April 9, 2024, OWCP denied appellant's claim for a recurrence of the need for medical treatment causally related to his September 19, 1987 employment injury.

By decision dated April 16, 2024, OWCP denied appellant's request for reconsideration of its August 19, 1996 decision as it was untimely filed and did not demonstrate clear evidence of error.

Appellant appealed to the Board. By decision dated July 1, 2024, the Board affirmed OWCP's April 9, 2024 merit decision and April 16, 2024 nonmerit decision.⁵

On August 19, 2024 appellant requested reconsideration of OWCP's August 10, 1996 merit decision.

In an August 27, 2024 statement, appellant maintained that the July 6, 1992 decision failed to describe the evidence necessary to establish a recurrence of disability even though it noted that he had not been informed of the evidence required.

By decision dated September 3, 2024, OWCP denied appellant's request for reconsideration of its August 10, 1996 decision regarding his claim for total disability, finding that it was untimely filed and failed to demonstrate clear evidence of error.

⁵ *Supra* note 2.

By decision dated October 17, 2024, OWCP denied modification of its April 9, 2024 decision.

On October 31, 2024 appellant again requested reconsideration. OWCP subsequently received an October 28, 2024 statement, wherein appellant questioned whether OWCP had the legal obligation to inform a claimant of his employment rights after it had made a determination that he had not established a recurrence of disability. By decision dated November 8, 2024, it denied appellant's request for reconsideration of the merits of his claim for a recurrence of the need for medical treatment, pursuant to 5 U.S.C. § 8128(a).

On November 13, 2024 appellant requested reconsideration of OWCP's October 17, 2024 decision. He maintained that OWCP failed to consistently define the issue so that he could meet his burden of proof to establish a recurrence of his injury or advise him of the facts needed for complete medical reports. Appellant further contended that *ex parte* communications between the employing establishment and OWCP violated his due process rights and resulted in the reports from his physician being considered not probative.

By decision dated November 19, 2024, OWCP denied appellant's request for reconsideration of the merits of his claim for a recurrence of the need for medical treatment, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.⁶ An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.⁷

If a claim for recurrence of a medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report establishing causal relationship between the employee's current condition and the original injury in order to meet his or her burden of proof.⁸ To meet this burden the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that

⁶ 20 C.F.R. § 10.5(y).

⁷ See *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *E.R.*, Docket No. 18-0202 (issued June 5, 2018).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4b (June 2013); see also *J.M.*, Docket No. 09-2041 (issued May 6, 2010).

the condition is causally related and supports his or her conclusion with sound medical rationale.⁹ Where no such rationale is present, medical evidence is of diminished probative value.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a recurrence of the need for medical treatment, commencing February 28, 1989, causally related to his accepted employment injury.

The Board preliminarily notes that it is unnecessary to consider the evidence and arguments appellant submitted prior to the issuance of OWCP's April 9, 2024 decision, which was considered by the Board in its July 1, 2024 decision. Findings made in prior Board decisions are *res judicata* and cannot be considered absent further review by OWCP under section 8128 of FECA.¹¹

As appellant did not submit a rationalized medical opinion establishing that he required medical treatment causally related to his accepted employment injury, the Board finds that he has not met his burden of proof to establish his recurrence claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.¹² 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.¹³ Timeliness is determined by the document receipt date (i.e., the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).¹⁴ Imposition of this one-year filing limitation does not constitute an abuse of discretion.¹⁵

⁹ *T.B.*, Docket No. 18-0672 (issued November 2, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

¹⁰ *W.B.*, Docket No. 22-0985 (issued March 27, 2023); *A.M.*, Docket No. 22-0322 (issued November 17, 2022); *R.C.*, Docket No. 20-1321 (issued July 7, 2021); *R.S.*, Docket No. 19-1774 (issued April 3, 2020)

¹¹ *W.K.*, Docket No. 23-0379 (issued October 26, 2023); *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

¹² 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).

¹³ 20 C.F.R. § 10.607(a).

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsideration*, Chapter 2.1602.4 (September 2020).

¹⁵ *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).

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.¹⁶ 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.¹⁷ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹⁸

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹⁹ 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 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. To demonstrate clear evidence of error, the evidence submitted must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.²⁰

OWCP procedures note that the term clear evidence of error is intended to represent a difficult standard. The claimant must present evidence which on its face demonstrates that OWCP made an error (for example, proof that a schedule award was miscalculated). 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.²¹ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.²²

ANALYSIS -- ISSUE 2

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.

¹⁶ 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).

¹⁷ *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 14 at Chapter 2.1602.5 (September 2020).

¹⁸ *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).

¹⁹ *J.M.*, Docket No. 22-0630 (issued February 10, 2023); *S.C.*, Docket No. 18-0126 (issued May 14, 2016).

²⁰ *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *Robert G. Burns*, *supra* note 18.

²¹ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 14 at Chapter 2.1602.5(a) (September 2020).

²² *L.J.*, Docket No. 23-0282 (issued May 26, 2023); *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

OWCP's regulations²³ and procedures²⁴ 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 issues.²⁵ The most recent merit decision addressing appellant's disability from work beginning March 16, 1989 was the Board's March 10, 1999 decision. As appellant's August 19, 2024 request for reconsideration was received more than one year after the March 10, 1999 decision, the Board finds that it was untimely filed. Consequently, he must demonstrate clear evidence of error by OWCP in denying his claim for total disability from work commencing March 16, 1989.²⁶

Appellant did not submit any relevant medical evidence in support of his request for reconsideration. As he has not raised a substantial question as to the correctness of OWCP's decision or submitted any supporting medical evidence, the Board finds that appellant has not demonstrated clear evidence of error.

LEGAL PRECEDENT -- ISSUE 3

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.²⁷

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.²⁸

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.²⁹ If it chooses to grant reconsideration, it reopens

²³ 20 C.F.R. § 10.607(a); *see J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Alberta Dukes*, 56 ECAB 247 (2005).

²⁴ *Supra* note 14 at Chapter 2.1602.4 (September 2020); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

²⁵ 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

²⁶ *Id.* at § 10.607(b); *see M.W.*, Docket No. 17-0892 (issued May 21, 2018); *see S.M.*, Docket No. 16-0270 (issued April 26, 2016).

²⁷ 5 U.S.C. § 8128(a); *see C.V.*, Docket No. 22-0078 (issued November 28, 2022); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

²⁸ 20 C.F.R. § 10.606(b)(3); *see K.D.*, Docket No. 22-0756 (issued November 29, 2022); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

²⁹ *Id.* at § 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). 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). *Id.* at Chapter 2.1602.4b.

and reviews the case on its merits.³⁰ If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.³¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly denied appellant's requests for reconsideration of the merits of his claim for a recurrence of the need for medical treatment, pursuant to 5 U.S.C. § 8128(a).

Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by OWCP. Regarding OWCP's denial of his claim for a recurrence of a medical condition, he contended on October 28, 2024 that OWCP had failed to properly inform him of his employment rights. On November 13, 2024 appellant argued that OWCP failed to properly explain the facts needed for him to provide complete medical reports and had engaged with improper communications with the employing establishment. His contentions, however, are not relevant to the issue of whether he has established a recurrence of a medical condition, which is medical in nature and can only be established through the submission of medical evidence.³² The Board has held that the submission of evidence or argument which does not address the issue involved does not constitute a basis for reopening a case.³³ Consequently, appellant is not entitled to a review of the merits of his claim based on the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).³⁴

Additionally, appellant failed to provide relevant and pertinent new evidence in support of his request for reconsideration and thus is not entitled to a review of the merits of his claim under the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.³⁵

³⁰ *Id.* at § 10.608(a); *see also D.B.*, Docket No. 22-0518 (issued November 28, 2022); *F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

³¹ *Id.* at § 10.608(b); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

³² *See V.W.*, Docket No. 24-0750 (issued September 11, 2024); *W.M.*, Docket No. 18-0565 (issued August 14, 2018); *S.J.*, Docket No. 17-1214 (issued April 16, 2018); *George C. Vernon*, 54 ECAB 319 (2003).

³³ *See P.G.*, Docket No. 20-1419 (issued September 16, 2021); *C.C.*, Docket No. 20-0950 (issued October 29, 2020); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

³⁴ 20 C.F.R. § 10.606(b)(3)(i) and (ii); *see also C.K.*, Docket No. 18-1019 (issued October 24, 2018).

³⁵ *D.A.*, Docket No. 22-0762 (issued September 30, 2022); *T.G.*, Docket No. 20-0329 (issued October 19, 2020); *C.C.*, Docket No. 17-0043 (issued June 15, 2018).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a recurrence of the need for medical treatment, commencing February 28, 1989, causally related to his accepted employment injury. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim for total disability from work, as it was untimely filed and failed to demonstrate clear evidence of error. The Board also finds that OWCP properly denied his requests for reconsideration of the merits of his claim for a recurrence of the need for medical treatment, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 3, October 17, and November 8 and 19, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 4, 2025
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