

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

S.K., Appellant

and

**DEPARTMENT OF DEFENSE, DEFENSE
LOGISTICS AGENCY, TINKER AIR FORCE
BASE, OK, Employer**

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) **Docket No. 25-0347**
) **Issued: April 4, 2025**
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 3, 2025 appellant filed a timely appeal from a February 27, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from the last merit decision, dated August 2, 2023, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of the claim, as it was untimely filed and failed to demonstrate clear evidence of error.

¹ Appellant's application for review (AB-1 Form) indicated an appeal from a December 9, 2024 decision of OWCP. However, the December 9, 2024 decision was a decision of the Board. *S.K.*, Docket No. 25-0101 (issued December 9, 2024). To the extent that this appeal constitutes a petition for reconsideration of the Board's December 9, 2024 decision, it is untimely, and not subject to review by the Board. *See* 20 C.F.R. §§ 501.2(c), 501.3, and 501.6(d).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 31, 2015 appellant, then a 57-year-old electronic document management systems technician, filed an occupational disease claim (Form CA-2) alleging that she sustained conditions of the bilateral upper extremities causally related to factors of her federal employment, including handling large volumes of mail. She noted that she first became aware of her condition on July 13, 2015, and realized its relationship to her federal employment on July 14, 2015. On March 30, 2016 OWCP accepted the claim for bilateral traumatic arthropathy, bilateral impingement syndrome of the shoulders, right elbow lateral epicondylitis, bilateral post-traumatic osteoarthritis of the first carpometacarpal joints of the hands, and contracture of the right hand. It paid appellant wage-loss compensation on the supplemental rolls as of March 30, 2016, and on the periodic rolls as of May 29, 2016.

By decision dated August 2, 2023, OWCP terminated appellant's wage-loss compensation and entitlement to a schedule award, effective that date, as she refused a January 31, 2023 offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2).

Appellant submitted a report dated June 4, 2024 from Dr. John Ellis, a Board-certified family practitioner, concerning her work limitations. Dr. Ellis reviewed appellant's medical history, but did not indicate that he had examined appellant. He recounted that appellant had retired as of April 30, 2018, and opined that the appellant was unable to work due to her physical limitations. Dr. Ellis indicated that appellant was unable to return to work and that the position offered was unacceptable. The report was received by OWCP on June 25, 2024.

On September 23, 2024 OWCP received *via* the Employees' Compensation Operations & Management Portal (ECOMP), appellant's request for a review of the written record by a representative of OWCP's Branch of Hearings and Review with regard to the August 2, 2023 termination decision.

By decision dated September 27, 2024, OWCP denied appellant's request for a review of the written record, finding that it was untimely filed. It informed her that it had exercised its discretion in relation to the issues involved and determined that the issues could equally well be addressed by requesting reconsideration and submitting evidence not previously considered.

On November 4, 2024 appellant requested reconsideration of OWCP's August 2, 2023 termination decision. She noted that she had submitted new medical evidence.

By decision dated November 6, 2024, OWCP summarily denied appellant's November 4, 2024 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On November 8, 2024 appellant appealed to the Board from OWCP's September 27 and November 6, 2024 decisions. By decision dated December 9, 2024, the Board affirmed the

³ *S.K.*, *supra* note 1.

September 27, 2024 decision, and affirmed in part and set aside in part the November 6, 2024 decision.⁴ The Board found that in its November 6, 2024 decision, OWCP properly determined that appellant's request for reconsideration was untimely filed, and thus she must demonstrate clear evidence of error by OWCP in its August 2, 2023 decision; but summarily denied her untimely request for reconsideration without complying with the review requirements of FECA and its implementing regulations.⁵ The Board remanded the case for an appropriate decision regarding appellant's untimely reconsideration request.

By decision dated February 27, 2025, OWCP denied appellant's November 4, 2024 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It identified the issue on reconsideration, reviewed the case background, provided factual findings, presented the standard for granting reconsideration for an untimely reconsideration request, and explained the basis for its decision denying the reconsideration request. OWCP also reviewed the June 4, 2024 report of Dr. Ellis and explained why it did not demonstrate clear evidence of error in its August 2, 2023 decision.

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.⁶ 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.⁷ 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).⁸ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁹

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.¹⁰ If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review.¹¹

⁴ *Id.*

⁵ *Supra* note 2; 20 C.F.R. § 10.607(b).

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

⁷ 20 C.F.R. § 10.607(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁹ *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).

¹⁰ *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).

¹¹ *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(b).

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by OWCP.¹² The evidence must be positive, precise, and explicit, and must manifest on its face that OWCP committed an error.¹³ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹⁴ 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.¹⁵

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁶ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. Even 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.¹⁷ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁸

ANALYSIS

The Board finds that OWCP properly denied appellant's November 4, 2024 request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

Preliminarily, the Board notes that it is unnecessary to analyze the timeliness of appellant's November 4, 2024 request for reconsideration, because the Board's December 9, 2024 decision found that OWCP properly determined that appellant's request for reconsideration was untimely filed. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹⁹

As noted above, OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard, and it is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.²⁰ Further, even evidence such as a detailed,

¹² *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).

¹³ *J.D.*, Docket No. 19-1836 (issued April 6, 2020); *Leone N. Travis*, 43 ECAB 227 (1999).

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

¹⁵ *T.N.*, Docket No. 18-1613 (issued April 29, 2020).

¹⁶ See *supra* note 8 at Chapter 2.1602.5a (September 2020); see also *K.W.*, Docket No. 19-1808 (issued April 2, 2020); *J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹⁷ *Id.*

¹⁸ *W.R.*, Docket No. 24-0244 (issued May 22, 2024); *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹⁹ *Supra* note 2 at § 8128; *J.H.*, Docket No. 22-0981 (issued October 30, 2023); *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *C.H.*, Docket No. 19-0669 (issued October 9, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

²⁰ *Supra* notes 16 and 17.

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 finds that appellant has not demonstrated clear evidence of error. The underlying issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and entitlement to schedule award benefits, effective August 2, 2023, for refusing an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2).²² The June 4, 2024 report of Dr. Ellis, submitted in support of appellant's request for reconsideration, did not demonstrate clear evidence of error in the August 2, 2023 decision. Dr. Ellis reviewed medical evidence of record, recounted that appellant had retired as of April 30, 2018, and explained that she was unable to return to work because she was retired. His report did not establish that appellant's refusal of suitable work was justified as it related to her disability prior to the termination of her compensation benefits.²³ Dr. Ellis did not establish that OWCP erroneously determined in the August 2, 2023 decision that appellant had refused an offer of suitable work.

Appellant has not otherwise submitted evidence sufficient to raise a substantial question as to the correctness of OWCP's August 2, 2023 decision.

As appellant's request for reconsideration was untimely filed and failed to demonstrate clear evidence of error, the Board finds that OWCP properly denied her request for reconsideration of the merits of her claim.

CONCLUSION

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

²¹ *Id.*

²² *K.J.*, Docket No. 23-0924 (issued June 7, 2024).

²³ *S.P.*, Docket No. 22-1070 (issued December 7, 2023).

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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