

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

M.M., Appellant

and

**DEPARTMENT OF THE AIR FORCE, TINKER
AIR FORCE BASE, OK, Employer**

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**Docket No. 25-0369
Issued: April 10, 2025**

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 9, 2025 appellant filed a timely appeal from a March 7, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated February 3, 2020, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly 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.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

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

On April 23, 2019 appellant, then a 66-year-old sheet metal patternmaker, filed an occupational disease claim (Form CA-2) alleging that he developed inflammatory polyarthritis, osteoarthritis of the wrists, left carpal tunnel syndrome, shoulder stiffness, and knee stiffness due to factors of his federal employment, including drilling, riveting, sanding, and grinding. He noted that he first became aware of his conditions and realized their relation to factors of his federal employment on January 1, 1980.

Appellant was treated by Dr. Gabriela Bahr, a Board-certified internist, on April 10, 2019 for polyarthralgia in the right wrist and elbow. He reported performing manual labor at work that included sheet metal and sanding activities that increased his symptoms. Dr. Bahr diagnosed inflammatory polyarthritis, osteoarthritis of bilateral wrists, and acute carpal tunnel syndrome of the left wrist. She recommended a series of x-rays and nighttime wrist splinting.

In a development letter dated May 1, 2019, OWCP informed appellant of the deficiencies of his claim. It advised him of the factual and medical evidence required and provided a questionnaire for his completion. In a separate letter of even date, OWCP requested that the employing establishment provide information regarding appellant's claim, including comments from a knowledgeable supervisor. It afforded both parties 30 days to respond.

OWCP subsequently received additional evidence. Appellant was evaluated by Dr. Edmond L. Hooks, a Board-certified internist, on November 29, 2017 and December 13, 2018 for an annual Chromate examination. In reports dated April 2 and 19, 2019, Dr. Hooks treated appellant in follow-up for bilateral shoulder, right elbow, and left wrist pain that progressed over the last 10 years while performing sheet metal and sanding activities. He diagnosed multiple joint pain, right shoulder, right elbow, and left wrist and opined that they were not job related. Dr. Hooks returned appellant to work without restrictions.

X-rays of appellant's feet dated April 10, 2019 revealed mild osteoarthritis of the bilateral ankle joint and bilateral calcaneal osteophyte formation. X-rays of his hands of even date revealed periarticular osteopenia and enthesophyte formation. X-rays of his elbows taken the same date revealed osteoarthritis of the right elbow.

In a May 16, 2019 response to OWCP's development letter, appellant noted that he began his civilian career in 1978 as an aircraft sheet metal worker performing structural repair projects with daily use of drill motors, rivet guns, and pneumatic impact wrenches to cut, grind, drill and hammer. He also noted working off of scaffolding using pneumatic impact tools.

² Docket No. 21-1125 (issued December 27, 2021).

By decision dated June 10, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted factors of his federal employment.

OWCP subsequently received additional evidence. In a July 11, 2019 report, Dr. Bahr noted that on April 10, 2019 appellant's physical examination was consistent for osteoarthritis of multiple joints including the right elbow. She advised that appellant reported using pneumatic tools for sanding and drilling, which could contribute to the development of osteoarthritis.

On November 5, 2019 appellant requested reconsideration. In an accompanying statement dated October 31, 2019, he recounted a 45-year career with the Federal Government as an aircraft sheet metal mechanic, advanced composite fabricator, radome inspector, and patternmaker. Appellant reported daily pain in his elbows, shoulders, wrists, hands, and knees that he attributed to his employment duties.

In a statement dated December 2, 2019, appellant noted that he had retired on July 1, 2019. He noted that his shoulder, elbow, wrist, and knee symptoms were related to his 45-year career with the Federal Government. He indicated that his life was adversely affected by his work-related injuries.

By decision dated February 3, 2020, OWCP denied modification of the June 10, 2019 decision.

On January 12, 2021 appellant requested reconsideration. In an accompanying January 8, 2021 statement, he reported visiting his orthopedic surgeon, Dr. William Stewart, who performed x-rays of the right elbow and a magnetic resonance imaging (MRI) scan of the left shoulder, which demonstrated damage to his right elbow. Appellant indicated that Dr. Stewart provided a statement supporting that appellant's repetitive work duties performed over the last 45 years led to the arthritic changes in his elbow. He noted submitting visit summaries from Dr. Stewart. Appellant reiterated that his jobs as an aircraft sheet metal mechanic, radome inspector, and composite fabricator were physically demanding positions that caused his right shoulder, elbow, and hand conditions. He asserted that he had proven causal relationship between his work conditions and factors of his federal employment. Appellant also resubmitted an October 31, 2019 narrative statement previously of record.

By decision dated March 16, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By decision dated December 27, 2021, the Board affirmed the March 16, 2021 nonmerit decision.³

Appellant subsequently submitted copies of letters sent to OWCP dated August 7, 2023 and August 21, 2024, wherein he asserted that several documents he submitted in support of his claim had not been read or considered prior to OWCP issuing their decision denying his claim for compensation. He noted submitting visit summaries from Dr. Stewart. Appellant reiterated that

³ *Id.*

his jobs as an aircraft sheet metal mechanic, radome inspector, and composite fabricator were physically demanding positions that caused his right shoulder, elbow, and hand conditions. He asserted that he had proven causal relationship between his work conditions and factors of his federal employment. Attached to the letters were his business card and photographs.

On February 18, 2025 the employing establishment informed OWCP that supporting documents for OWCP File No. xxxxxx386 were misfiled. It noted that the documents were received on January 12, 2021; however, they likely were not considered under OWCP File No. xxxxxx386.

On February 19, 2025 appellant requested reconsideration. He asserted that important medical evidence and personal statements submitted in support of his claim were either lost, misfiled, and/or never considered by OWCP. As a result, he contended that OWCP did not consider all the evidence and the decision was issued in error. In correspondence dated February 19, 2025, OWCP informed the employing establishment that the above-mentioned documents were filed into the correct case file, OWCP File No. xxxxxx386.

On February 25, 2025 appellant recounted a 41-year career with the Federal Government as an aircraft sheet metal mechanic, advanced composite fabricator, radome inspector, and patternmaker. He reiterated that important medical evidence and personal statements submitted in support of his claim were lost, misfiled, and/or never considered by OWCP.

By decision dated March 7, 2025, 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.

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.⁴ 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.⁵ Timeliness is determined by the document receipt date, *i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS).⁶ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁷

OWCP may not deny a reconsideration request solely because it was untimely filed. When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited

⁴ 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).

⁵ 20 C.F.R. § 10.607(a).

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

⁷ *R.L.*, Docket No. 18-0496 (issued January 9, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

review to determine whether it demonstrates clear evidence of error.⁸ If a request demonstrates clear evidence of error, OWCP will reopen the case for merit review.⁹

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by OWCP. The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence that 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 to merely 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.¹⁰

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard and the claimant must present evidence, which on its face shows that OWCP made an error.¹¹ 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.¹² The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹³

ANALYSIS

The Board finds that OWCP properly 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.

OWCP's regulations¹⁴ and procedures¹⁵ 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.¹⁶ The most recent adverse merit decision was OWCP's February 3, 2020 decision. As OWCP did

⁸ See 20 C.F.R. § 10.607(b); *G.G.*, Docket No. 18-1074 (issued January 7, 2019); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁹ *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). See also *id.* at § 10.607(b); *supra* note 6 at Chapter 2.1602.5 (September 2020).

¹⁰ *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

¹¹ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 6 at Chapter 2.1602.5a (September 2020).

¹² *Id.*

¹³ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹⁴ 20 C.F.R. § 10.607(a); see *F.N.*, Docket No. 18-1543 (issued March 6, 2019); *Alberta Dukes*, 56 ECAB 247 (2005).

¹⁵ *Supra* note 6 at Chapter 2.1602.4 (September 2020); see *L.A.*, Docket No. 19-0471 (issued October 29, 2019); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

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

not receive his request for reconsideration until February 25, 2025, more than one year after the February 3, 2020 merit decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in denying his claim.

On reconsideration, appellant asserted that important medical evidence and personal statements submitted in support of his claim were lost, misfiled, and/or never considered by OWCP. The Board, however, has reviewed this general allegation and finds that, without specificity, it does not show on its face clear evidence of error on the part of OWCP in its February 3, 2020 decision.¹⁷ As explained above, the term clear evidence of error is intended to represent a difficult standard.¹⁸ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence that 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 to merely show that the evidence could be construed so as to produce a contrary conclusion.

Accordingly, the Board finds that OWCP properly determined that appellant's request for reconsideration was untimely filed and failed to demonstrate clear evidence of error on part of OWCP in its February 3, 2020 decision.

CONCLUSION

The Board finds that OWCP properly 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.

¹⁷ *R.M.*, Docket No. 18-1393 (issued February 12, 2019); *J.R.*, Docket No. 07-1112 (issued November 27, 2007).

¹⁸ *See supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2025
Washington, DC

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

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

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