

² 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On November 4, 2019 appellant, then a 47-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that on October 31, 2019 she sustained right side neck, shoulder and arm injuries when involved in a motor vehicle accident while in the performance of duty. By decision dated March 20, 2020, OWCP accepted the claim for cervical, thoracic, and lumbar ligament sprains. It paid appellant wage-loss compensation on the supplemental rolls for total disability commencing March 14, 2020, and on the periodic rolls for total disability commencing April 26, 2020.

In multiple reports covering the period November 13, 2019 through April 28, 2021, Dr. Nasser Ani, a Board-certified orthopedic surgeon, diagnosed cervical disc degeneration, cervical radiculopathy, hemangioma, lumbar radiculopathy, lumbar and thoracic ligament sprains, lumbar intervertebral disc degeneration, and sacroiliitis. He opined that the accepted October 31, 2019 employment injury aggravated her preexisting cervical and lumbar degenerative conditions. Dr. Ani concluded that appellant was totally disabled from work.

On September 11, 2020 Dr. Ani requested expansion of the acceptance of appellant's claim to include cervical and lumbar disc degeneration, and cervical and lumbar radiculopathy. He related that appellant required surgical intervention at C5-C7 due to her accepted employment injury.

In a report dated October 1, 2020, Dr. Frank Corrigan, a Board-certified orthopedic surgeon and OWCP referral physician, related appellant's physical examination findings, his review of the medical evidence, and review of the statement of accepted facts (SOAF). He diagnosed cervical, thoracic, and lumbar sprains. Dr. Corrigan opined that appellant had fully recovered from the accepted October 31, 2019 employment injury without residuals. He explained that appellant's current symptoms were more likely related to chronic and degenerative pathology and were not causally related to the accepted October 31, 2019 employment injury. Dr. Corrigan concluded that appellant was unable to resume her date-of-injury position, but could perform sedentary work.

In a March 5, 2021 report, Dr. Stanley Askin, a Board-certified orthopedic surgeon and OWCP referral physician, based upon appellant's physical examination, and review of the medical evidence and SOAF, opined that appellant's preexisting degenerative conditions had not been aggravated by the accepted October 31, 2019 employment injury. In support of this conclusion, he explained that there was no material change in her preexisting conditions and objective findings did not support her subjective complaints. Dr. Askin concluded that there was no employment-related injury precluding her from performing her date-of-injury position.

In reports dated March 17, May 7 and 10, 2021, Dr. Ani reiterated his opinion that the accepted October 31, 2019 employment injury also caused the diagnosed cervical and lumbar radiculopathy, cervical disc degeneration, and sacroiliitis. He explained that while appellant had preexisting degenerative changes prior to the accident, she was asymptomatic before the accident, it aggravated her condition and precipitated her symptoms. Dr. Ani further explained that the impact from the automobile accident caused flexion and extension of the neck, which caused significant injury to the soft tissue that aggravated her degenerative changes.

In a June 30, 2021 supplemental report, Dr. Corrigan reviewed additional diagnostic reports and diagnosed cervical, thoracic, and lumbar sprains. He opined that the claim should not be expanded to include any additional conditions. Based on appellant's physical examination and review of diagnostic studies, Dr. Corrigan reported that appellant had multilevel cervical spine disc bulges and degenerative changes. He explained that these findings occurred over time and were not due to the October 31, 2019 traumatic event.

On October 29, 2021 OWCP referred appellant to Dr. John D. Tydings a Board-certified orthopedic surgeon, for an impartial medical evaluation to resolve the conflict in medical opinion between Dr. Ani and Dr. Corrigan.

In a report dated March 14, 2022, Dr. Tydings, based upon a review of the medical record, the SOAF, and appellant's physical examination, diagnosed cervical, thoracic, and lumbar strains/sprains. He found that the diagnosed cervical and lumbar disc degeneration and cervical stenosis were associated with age-appropriate degenerative pathology unrelated to any specific traumatic event, such as the October 31, 2019 motor vehicle accident. Dr. Tydings opined that appellant sustained a temporary aggravation of her underlying cervical degenerative disc disease, which had resolved. He concluded that appellant had no permanent injury causally related to the October 31, 2019 motor vehicle accident. Dr. Tydings opined that appellant was not totally disabled and was capable of returning to medium-duty capacity work. He explained that her present level of disability was unrelated to the accepted cervical, thoracic, and lumbar strains, which had resolved.

On May 19, 2022 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits based on Dr. Tydings' report.

Thereafter OWCP received reports dated December 5, 2019, January 3, 2020, May 7, 2021, and June 9, 2022 from Dr. Ani which were repetitive of reports previously submitted.

In a November 4, 2019 report, Dr. John Lopez, a Board-certified internist, recounted appellant's October 31, 2019 employment injury and diagnosed cervical strain.

OWCP also received medical literature and diagnostic test reports.

In a letter dated May 31, 2022, appellant disagreed with the proposal to terminate her wage-loss compensation and medical benefits. She asserted that the evidence established that her claim should be expanded to include additional conditions and that she continued to have residuals and disability due to her accepted October 31, 2019 employment injury.

By decision dated June 28, 2022, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits effective that date. It found that Dr. Tydings' report was entitled to the weight of the medical evidence and established that appellant had no further employment-related disability or need for further medical treatment due to her cervical, lumbar, and thoracic sprains. OWCP further noted that he had found that appellant's additional diagnoses of cervical and lumbar radiculopathy, and degenerative disc disease, were not causally related to the October 31, 2019 employment injury.

On September 1, 2022 appellant requested reconsideration. In support of her request, she submitted an August 26, 2022 report from Dr. Ani, which was repetitive of prior reports. Also received were diagnostic tests and a February 26, 2022 emergency department report by Dr. Michael Dyce, a Board-certified emergency medicine physician, which noted acute bilateral lower back pain.

By decision dated November 21, 2022, OWCP denied modification of the June 28, 2022 termination decision.

On January 5, 2023 appellant requested reconsideration of the termination of her compensation benefits. She also requested that OWCP expand the acceptance of her claim to include the additional diagnosed conditions.

In reports dated December 12, 2022 and January 9, 2023, Dr. Ani reiterated findings and diagnoses from his prior reports.

By decision dated March 28, 2023, OWCP denied modification of the November 21, 2022 decision.

OWCP subsequently received a report dated March 6, 2023 by Dr. Ani, which related findings duplicative of prior reports.

On June 2, 2023 appellant, through counsel, requested reconsideration. She asserted that Dr. Tydings' report was unrationalized and, thus, insufficient to terminate appellant's wage-loss compensation and medical benefits.

By decision dated August 9, 2023, OWCP denied modification of the March 28, 2023 decision.

In a June 5, 2024 report, received by OWCP on July 31, 2024, Dr. John W. Ellis, a Board-certified family medicine physician, requested that appellant's claim be reconsidered and reopened. Dr. Ellis recounted appellant's history of injury, and reviewed medical and surveillance records. He also related appellant's physical examination findings. Dr. Ellis disagreed with Dr. Tydings that appellant's October 31, 2019 employment did not permanently aggravate her preexisting degenerative disc conditions. He opined that the trauma from the October 31, 2019 motor vehicle accident aggravated and accelerated her preexisting degenerative changes leading to permanent symptomatic changes. Dr. Ellis concluded that the acceptance of appellant's claim should be expanded to include cervical and lumbar disc degeneration, radiculopathy, stenosis, and C5-6 and C6-7 disc herniations. He also found appellant totally disabled from her date-of-injury position.

On October 30, 2024 appellant, through counsel, requested reconsideration. Counsel argued that the June 5, 2024 report from Dr. Ellis, which was received by OWCP on July 31, 2024, was within the one-year deadline for reconsideration of the August 9, 2023 decision.³

By decision dated November 1, 2024, OWCP denied appellant's request for reconsideration of its August 9, 2023 decision as it was untimely filed and did not 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 OWCP's regulations establish a one-year time limitation for requesting reconsideration which begins on the date of the original OWCP merit decision.⁵ A right to reconsideration within one-year also accompanies any subsequent merit decision on the issues.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. Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).⁷ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁸

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.⁹ Its 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.¹⁰

³ Counsel noted the date as August 9, 2024, which appears to be a typographical error.

⁴ 5 U.S.C. § 8128(a); *M.S.*, Docket No. 25-0417 (issued June 18, 2025); *B.J.*, Docket No. 24-0430 (issued June 5, 2024); *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 *B.J.*, *supra* note 4; *E.R.*, Docket No. 21-0423 (issued June 20, 2023); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert F. Stone*, 57 ECAB 292 (2005).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

⁸ *B.J.*, *supra* note 4; *S.S.*, Docket No. 23-0086 (issued May 26, 2023); *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).

⁹ *See* 20 C.F.R. § 10.607(b); *B.J.*, *id.*; *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

¹⁰ *B.J.*, *id.*; *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); *supra* note 7 at Chapter 2.1602.5 (September 2020).

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹¹ 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.¹²

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹³ The claimant must present evidence which on its face demonstrates that OWCP made an error. 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.¹⁴ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁵

ANALYSIS

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.

OWCP's regulations and procedures establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case.¹⁶ The most recent merit decision was OWCP's August 9, 2023 decision which denied modification of the termination of appellant's compensation benefits effective June 28, 2022.

In his October 30, 2024 request for reconsideration, counsel asserted that appellant's request for reconsideration was timely because OWCP received Dr. Ellis' June 5, 2024 report requesting reconsideration on July 31, 2024. However, Dr. Ellis is not an authorized representative for appellant. OWCP's regulations and procedures, and Board precedent,¹⁷ provide that a request for reconsideration must be in writing, be signed and dated by the claimant or the

¹¹ *B.J., id.; S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 7 at Chapter 2.1602.5a (September 2020).

¹² *B.J., id.; L.J.*, Docket No. 23-0282 (issued May 26, 2023); *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

¹³ *B.J., id.; G.G.*, *supra* note 8; *see also* 20 C.F.R. § 10.607(b); *supra* note 7 at Chapter 2.1602.5 (September 2020).

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

¹⁵ *B.J., id.; G.B.*, Docket No. 19-1762 (issued March 10, 2020); *D.S.*, Docket No. 17-0407 (issued May 24, 2017); *George C. Vernon*, 54 ECAB 319 (2003).

¹⁶ *Supra* note 6.

¹⁷ 20 C.F.R. § 10.606(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, 2.1602.2(a) (October 2011); *see A.J.*, Docket No. 14-1617 (issued December 23, 2014).

authorized representative, be accompanied by relevant new evidence or argument not considered previously, and identify the decision and the specific issues for which reconsideration is requested. As counsel, appellant's designated representative, did not request reconsideration until October 30, 2024, more than a year after the August 9, 2023 decision, the request for reconsideration was untimely. Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in having terminated her compensation benefits effective June 28, 2022.

In support of the untimely request for reconsideration, on July 31, 2024, OWCP received a report from Dr. Ellis dated June 5, 2024. The Board finds that although Dr. Ellis opined that appellant's claim should be expanded to include additional conditions and that her compensation benefits should not have been terminated, it is insufficient to demonstrate clear evidence of error. The Board notes that clear evidence of error is intended to represent a difficult standard.¹⁸ The Board has long held that 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.¹⁹ It is merely not enough to establish that the evidence could be construed so as to produce a contrary conclusion.²⁰ Accordingly, the Board finds that the report from Dr. Ellis submitted on reconsideration does not demonstrate clear evidence of error by OWCP in its June 28, 2022 decision.

CONCLUSION

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.

¹⁸ See *E.R.*, Docket No. 24-0681 (issued July 29, 2024); *K.W.*, Docket No. 19-1808 (issued April 2, 2020); *J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹⁹ *Id.*

²⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 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