United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
and	)	**Docket No. 25-0664**
	)	**Issued: August 12, 2025**
DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Seattle, WA, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 2, 2025 appellant filed a timely appeal from an April 8, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).[1] As more than 180 days elapsed from the last merit decision, dated December 10, 2019, to the filing of this appeal, pursuant to the

[1] Appellant's Application for Review (AB-1) form indicates that she was also requesting an appeal from a December 10, 2019 merit decision of OWCP. However, the Board's review authority is limited to appeals which are filed within 180 days from the date of issuance of OWCP's decision. 20 C.F.R. § 501.3(e). The 180th day following the December 10, 2019 decision was Sunday, June 7, 2020. As this fell on a Sunday, appellant had until Monday, June 8, 2020 to file the appeal. *Id.* at § 501.3(f). Appellant, however, did not file an appeal with the Board until Wednesday, July 2, 2025, more than 180 days after the December 10, 2019 OWCP decision. Thus, the Board lacks jurisdiction to review that decision.

Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.[3]

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 June 23, 2015 appellant, then a 45-year-old supervisory workers' compensation claims examiner, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome (CTS) and a neck injury due to factors of her federal employment. She related that her daily repetitive work duties included keyboarding and using a mouse 80 to 90 percent of the day, and frequently holding the telephone with her head against her shoulder when handling a high volume of telephone calls while in the performance of duty. By decision dated September 24, 2015, OWCP accepted the claim for aggravation of bilateral CTS and aggravation of neck sprain. On May 29, 2018 appellant underwent OWCP-authorized bilateral carpal tunnel release

In a report dated August 14, 2019, Dr. Michael S. McManus, a Board-certified occupational medicine physician, opined that appellant had four percent permanent impairment of each upper extremity due to her accepted bilateral carpal tunnel syndrome. He also noted appellant's accepted cervical strain and related that appellant denied any upper extremity radicular type pain, or any other upper extremity numbness or paresthesia, unrelated to her carpal tunnel syndrome. In noting appellant's history, he indicated that appellant was status post motor vehicle collision of August 2016, with partial thickness rotator cuff tear of the left shoulder.

By decision dated December 10, 2019, OWCP granted appellant a schedule award for four percent permanent impairment of each arm due to her accepted bilateral CTS, and zero percent permanent impairment of the neck due to the neck sprain. The period of the award ran for 24.96 weeks from August 14, 2019 through February 4, 2020.

OWCP subsequently received progress notes dated December 13, 2019 through February 12, 2025, wherein Dr. Kyle Oh, an attending Board-certified physiatrist, diagnosed cervical sprain; C3-C4, C4-C5, and C5-C6 disc protrusions; and chronic pain syndrome.

OWCP also received reports dated November 11 and December 9, 2016, and January 6, 2017, wherein Dustin A. Reed, a physician assistant, provided assessments of sprain of ligaments

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that following the issuance of the April 8, 2025 decision, OWCP received additional evidence. 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*.

of cervical spine, initial encounter, OWCP-approved neck/carpal tunnel syndrome; other chronic pain; and long-term current use of opiate analgesic.

Additionally, OWCP received an operative report dated January 25, 2017, wherein Dr. Hyun Hong, a Board-certified anesthesiologist, performed a cervical interlaminar epidural steroid injection to treat appellant's diagnosis of neck and radicular pain.

On April 4, 2025 appellant requested reconsideration. In an attached statement, she contended that she had a left shoulder rotator cuff tear that was documented by a magnetic resonance imaging (MRI) scan and in an August 14, 2019 impairment rating evaluation performed by Dr. McManus. She noted, however, that Dr. McManus did not include the MRI scan finding in his permanent impairment rating calculations for her bilateral upper extremities. Appellant also noted that OWCP's district medical adviser (DMA) overlooked the MRI scan finding in his permanent impairment rating calculations for her upper extremities. She requested a new impairment rating which would include her shoulder condition. Appellant concluded that there are no provisions for apportionment under FECA, and thus the rated impairment should reflect the total loss as evaluated for the arm/upper extremity, including industrial and non-industrial impairment.

By decision dated April 8, 2025, 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.[4] OWCP's regulations[5] establish a one-year time limitation for requesting reconsideration which begins on the date of the original OWCP merit decision. 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

[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] *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] *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).

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]

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, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The last merit decision was issued by OWCP on December 10, 2019. As appellant's request for reconsideration was not received by OWCP until April 4, 2025, more than one year after the December 10, 2019 decision, pursuant to 20 C.F.R. § 10.607(a), the request for

[9] *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).

[10] *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).

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

[12] *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] *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] *J.S.,* Docket No. 16-1240 (issued December 1, 2016). *Id.* at Chapter 2.1602.5a (September 2020).

[15] *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).

reconsideration was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in denying the claim.[16]

On reconsideration, appellant contended that OWCP failed to consider her left shoulder rotator cuff tear in calculating her bilateral upper extremity permanent impairment ratings. She also contended that neither Dr. McManus nor OWCP's DMA considered her left shoulder condition in their permanent impairment rating calculations. It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.[17] However, Dr. McManus indicated in his August 14, 2019 report that appellant was status post motor vehicle collision of August 2016, with partial thickness rotator cuff tear of the left shoulder. The Board also notes that OWCP has not accepted appellant's claim for left shoulder rotator cuff tear. Therefore, for these reasons, her contentions are insufficient to raise a substantial question concerning the correctness of OWCP's December 10, 2019 decision.

The medical reports of Dr. Oh and Dr. Hong submitted by appellant in support of her untimely reconsideration request are also insufficient to demonstrate clear evidence of error with respect to OWCP's December 10, 2019 merit decision. This evidence is irrelevant to the underlying issue of whether the medical evidence of record is sufficient to establish greater than four percent permanent impairment of each upper extremity, for which appellant previously received schedule award compensation, as neither physician performed an impairment evaluation, calculated an impairment rating, and provided a date of maximum medical improvement pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[18] Thus, the reports of Dr. Oh and Dr. Hong do not establish that appellant's prior schedule award was clearly erroneous, or that she might be entitled to an additional schedule award.[19] As such, this evidence does not raise a substantial question regarding the degree of appellant's permanent impairment.[20]

Appellant also submitted reports from a physician assistant. However, this evidence is irrelevant as the Board has held that reports from a physician assistant are of no probative value as

[16] 20 C.F.R. § 10.607(b); *D.Z.,* Docket No. 25-0422 (issued June 26, 2025); *S.C.,* Docket No. 20-1537 (issued April 14, 2021); *R.T.,* Docket No. 19-0604 (issued September 13, 2019); *see Debra McDavid,* 57 ECAB 149 (2005).

[17] *C.J.*, Docket No. 21-1389 (issued July 24, 2023); *T.W.*, Docket No. 16-1818 (issued December 28, 2017); *see B.M.*, Docket No. 09-2231 (issued May 14, 2010); *supra* note 7 at Chapter 3.700.3a(3) (January 2010); *Dale B. Larson,* 41 ECAB 481 (1990); *Beatrice L. High*, 57 ECAB 329 (2006) (OWCP's procedures provide that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function).

[18] A.M.A., *Guides* (6th ed. 2009).

[19] *L.C.,* Docket No. 17-1951 (issued March 6, 2018); *J.M.,* Docket No. 15-1634 (issued September 16, 2016). *See also K.D.*, Docket No. 15-524 (issued August 3, 2015).

[20] *J.D.,* Docket No. 22-0379 (issued June 6, 2022); *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *supra* note 12.

they do not constitute competent medical evidence under FECA.[21] Consequently, these reports are insufficient to demonstrate clear evidence of error by OWCP with respect to the underlying medical issue.

Accordingly, the Board finds that OWCP properly denied appellant's April 4, 2025 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

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 April 8, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 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

[21] Section 8101(2) of FECA provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also Y.B.,* Docket No. 21-0092 (issued October 15, 2021) (reports from a physician assistant are of no probative value as they do not constitute competent medical evidence); *T.S.,* Docket No. 19-0056 (issued July 1, 2019) (physician assistants are not considered physicians under FECA).