

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

S.A., Appellant)
and) Docket No. 25-0727
U.S. POSTAL SERVICE, TULSA PROCESSING)
AND DISTRIBUTION CENTER, Tulsa, OK,)
Employer)
Issued: August 27, 2025

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 24, 2025 appellant, through counsel, filed a timely appeal from a July 9, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision, dated June 24, 2024, 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 over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

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 November 8, 2023 appellant, then a 60-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed pain, degeneration, neuropathy, and osteoporosis of her back, knees, and hands due to factors of her federal employment, including lifting, bending, and getting on and off equipment. She noted that she first became aware of her conditions and realized their relationship to her federal employment on December 11, 2019. Appellant did not stop work. Thereafter, OWCP received a September 28, 2022 health summary of medical conditions from appellant.

OWCP also received page 2 of an October 2, 2023 electromyography/nerve conduction velocity (EMG/NCV) study report wherein Dr. Gregory S. Connor, Board-certified in psychiatry and neurology, noted an impression of bilateral median neuropathies at the wrist, graded severe on the right and moderate-to-severe on the left, ulnar distribution changes more likely caused by an underlying neuropathy rather than entrapment at the elbow, underlying demyelinating and axonal neuropathy, and no evidence of cervical or lumbar radiculopathy.

October 7, 2023 x-rays of the left hand revealed “[s]evere erosive osteoarthritis of the [distal interphalangeal] joint spaces,” most pronounced at the level of the third digit.

In a November 16, 2023 statement, the employing establishment controverted the claim as it was not filed within three years of the date of injury.

Thereafter, OWCP received an October 11, 2022 request for reasonable accommodation wherein appellant's supervisor indicated that appellant had been given “simpler duties” as she was unable to lift the required weight limit, and that her attendance had stopped or become unacceptable as of July 9, 2022.

Appellant submitted a February 16, 2019 employing establishment routing slip, which indicated that she would be moved to a new job assignment.

In a January 25, 2024 statement, appellant described her duties at the employing establishment commencing on April 11, 2015, including prolonged standing, mounting and dismounting equipment at the loading dock to hook three receptacles and transport them, dumping mail sacks, and filling receptacles with large parcels.

By decision dated February 7, 2024, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted work factors.

Thereafter, OWCP received a notification of personnel action (PS Form 50) which indicated that appellant separated from the employing establishment effective January 23, 2024.

On February 20, 2024, appellant requested reconsideration. In a supporting statement dated December 27, 2023, appellant described work factors including pulling heavy equipment, driving forklifts to pick up heavy sacks of parcels and heavy tubs of magazines, placing parcels in receptacles, pushing wire cages of mail, and picking up and dumping tubs of mail in containers, prolonged standing, and mandatory overtime.

By decision dated February 21, 2024, OWCP denied appellant's request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

Thereafter, OWCP received a July 20, 2021 EMG/NCV study, which revealed bilateral carpal tunnel syndrome.

OWCP received a series of reports dated February 17, 2022 through January 3, 2024 by Dr. Brian Chalkin, an osteopath Board-certified in orthopedic surgery, wherein he diagnosed bilateral carpal tunnel syndrome. On July 1, 2022, Dr. Chalkin performed a right endoscopic carpal tunnel release and right distal forearm fasciotomy. On December 18, 2023, he performed a left endoscopic carpal tunnel release and left distal forearm fasciotomy.

In reports dated October 23 and November 14, 2023, Dr. Yogesh Mittal, a Board-certified orthopedic surgeon, diagnosed moderate degenerative joint disease of the right knee, with chondromalacia of the patella, and possible right medial and lateral meniscal tears. On December 28, 2023, he performed right knee arthroscopy, partial medial and lateral meniscectomy, extensive synovectomy, suprapatellar pouch and notch, and abrasion chondroplasty of the medial femoral condyle and patella.

In a December 27, 2023 report, Dr. M. Stephen Wilson, an orthopedic surgeon, described appellant's job duties and summarized a history of injury and treatment. He noted that appellant underwent right carpal tunnel release in 2022, a left carpal tunnel release in 2023, weakness of flexion and extension of the right leg, positive McMurray's sign in the right leg, patellofemoral crepitation in the right knee, and would undergo a right knee medial meniscectomy on December 28, 2023. On examination, Dr. Wilson found decreased lumbar motion in all planes, decreased sensation to monofilament testing in the L4 dermatomes bilaterally, a positive flexion, abduction, and external rotation (FABER) of the left hip, significant tenderness to palpation of the left sacroiliac joint, bilaterally positive straight leg raising tests, bilaterally positive McMurray's sign, positive Tinel's and Phalen's test in the right wrist, and tenderness over the right plantar fascia. He diagnosed bilateral carpal tunnel syndrome, status post right carpal tunnel release, primary osteoarthritis of the right hand, lumbar stenosis without neurogenic claudication, intervertebral lumbosacral disc disorder with radiculopathy, left sacroiliac joint dysfunction, lateral, medial, other meniscus derangement of the knees, and bilateral plantar fasciitis.

In a January 17, 2024 report, Dr. Wilson noted that appellant had retired. He recommended home exercise during her recovery from right knee surgery.

On June 18, 2024, appellant requested reconsideration.

By decision dated June 24, 2024, OWCP denied modification of the February 7, 2024 decision.

In a July 3, 2024 report, Dr. Wilson reviewed OWCP's June 24, 2024 decision. He opined that appellant's "job duties accelerated, aggravated, and were the main contributing factor to the development of the occupational disease conditions listed[,] including lumbar spinal stenosis and arthritic conditions. Dr. Wilson opined that plantar fasciitis was caused by prolonged standing and walking on concrete floors while at work. He explained that the repetitive and cumulative trauma in her course of employment had "led to her current symptomatology."

In a January 14, 2025 report, Dr. Wilson recounted a history of injury and treatment and noted findings on examination substantially similar to those observed on December 27, 2023. He diagnosed bilateral carpal tunnel syndrome, aggravation of underlying primary osteoarthritis of the hands, status post right and left carpal tunnel release, aggravation of underlying lumbar stenosis, aggravation of underlying lumbar/lumbosacral intervertebral disc disorders with radiculopathy, bilateral sacroiliac joint segmental and somatic dysfunction, internal derangements of the knees, bilateral meniscal tears, bilateral plantar fasciitis, and bilateral Achilles tendinitis.

In a February 12, 2025 report, Dr. Wilson noted that a January 20, 2025 MRI scan of the right hip demonstrated severe narrowing of the right ischial femoral interval with edema in the quadratus femoris musculature, possibly correlated with ischiofemoral impingement, mild degenerative osseous changes at the bilateral hips, degenerative signal of the anterior superior right hip labrum, trace edema of the bilateral greater trochanteric bursa, mild tendinosis of the bilateral gluteus medius and minimus tendons, low grade partial tearing of the right gluteus minimus, and moderate degenerative changes of the spine. He reiterated previous diagnoses.

On June 25, 2025, appellant requested reconsideration.

By decision dated July 9, 2025, OWCP denied appellant's request for reconsideration, 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.³ 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.⁴ 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).⁵ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁶

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

⁴ 20 C.F.R. § 10.607(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁶ *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).

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.⁷ If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review.⁸

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by OWCP.⁹ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.¹⁰ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹¹ 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 request for reconsideration 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 shows that OWCP made an error.¹⁴ 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.¹⁵ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁶

⁷ 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).

⁸ *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).

⁹ *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).

¹⁰ *J.D.*, Docket No. 19-1836 (issued April 6, 2020); *Leone N. Travis*, 43 ECAB 227 (1999).

¹¹ *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

¹² *T.N.*, Docket No. 18-1613 (issued April 29, 2020).

¹³ See *supra* note 8 at Chapter 2.1602.5a (September 2020); *see also J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹⁴ *D.Z.*, Docket No. 25-0422 (issued June 26, 2025); *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

¹⁵ *Id.*

¹⁶ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

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.

The last merit decision was issued on June 24, 2024. As appellant's request for reconsideration was not received by OWCP until June 25, 2025, more than one year after the June 24, 2024 decision, pursuant to 20 C.F.R. § 10.607(a), the request for reconsideration was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in denying the claim.¹⁷

In support of her June 25, 2025 request for reconsideration, appellant submitted July 3, 2024, and January 14 and February 12, 2025 reports by Dr. Wilson, wherein he noted findings on examination, listed diagnoses, and opined that the accepted work factors accelerated, aggravated, and contributed to lumbar spinal stenosis, arthritic conditions, and plantar fasciitis. However, as explained above, 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.¹⁸

The Board thus finds that appellant's request for reconsideration did not show on its face that OWCP committed an error in denying her occupational disease claim.¹⁹ Accordingly, 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.

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.

¹⁷ 20 C.F.R. § 10.607(b); *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).

¹⁸ *U.C.*, Docket No. 19-1753 (issued June 10, 2020).

¹⁹ *S.C.*, Docket No. 19-1424 (issued September 15, 2020).

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 27, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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