

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

R.B., Appellant)
and) Docket No. 25-0543
DEPARTMENT OF DEFENSE, DEPARTMENT)
OF DEFENSE EDUCATIONAL ACTIVITY,)
Lakenheath, UK, Employer)
Issued: July 18, 2025
)

Appearances:

Thomas S. Harkins, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 14, 2025 appellant, through counsel, filed a timely appeal from a November 25, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The most recent merit decision is a Board decision dated July 26, 2022, which became final after 30 days of issuance and is not subject to further review.² As there is no merit decision by OWCP issued within 180 days of the filing of this appeal, pursuant to the Federal Employees' Compensation

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 20 C.F.R. § 501.6(d). *See also* J.H., Docket No. 23-0055 (issued January 30, 2024); J.T., Docket No. 21-0844 (issued April 21, 2023); M.D., Docket No. 22-0542 (issued August 17, 2022).

Act³ (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, finding that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

This case has previously been before the Board.⁴ 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 March 3, 2016 appellant, then a 53-year-old kindergarten aide, filed a traumatic injury claim (Form CA-1) alleging that on February 16, 2016 she injured her head, shoulders, right palm and both thumbs when she slipped and fell on ice in the parking lot of the employing establishment while in the performance of duty. She stopped work on February 17, 2016 and returned to work on February 22, 2016. OWCP accepted the claim for post-concussion syndrome and post-traumatic headaches. It paid appellant wage-loss compensation on the supplemental rolls for the period April 27, 2016 through December 15, 2017.

On November 10, 2020 counsel asserted that appellant had sustained additional conditions causally related to her February 16, 2016 employment injury and submitted medical evidence.

By decision dated January 12, 2021, OWCP denied appellant's request to expand the acceptance of her claim to include an additional condition as causally related to, or as a consequence of, her accepted employment injury. Appellant, through counsel, appealed to the Board.

By decision dated July 26, 2022,⁵ the Board affirmed OWCP's January 12, 2021 decision, finding that appellant had not met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to, or as a consequence of, her February 16, 2016 employment injury.

On September 12, 2024 appellant, through counsel, requested reconsideration and provided additional medical evidence. In a March 22, 2023 report, Dr. Michael W. Lenihan, a Board-certified neurologist, described the February 16, 2016 employment injury and related that appellant had a history of traumatic brain injury with a concussion in February 2016. He

³ 5 U.S.C. § 8101 *et seq.*

⁴ Docket No. 22-0713 (issued July 26, 2022), *petition for recon. denied*, Docket No. 22-0713 (issued September 15, 2023).

⁵ *Id.*

diagnosed migraine, post-traumatic headache disorder, and occipital neuralgia. In a July 6, 2023 note, Dr. Lenihan diagnosed occipital neuralgia and noted that this was a migraine trigger.

On April 13 and August 9, 2023 Gabriell Needham, an acute care nurse practitioner, examined appellant.

In a January 29, 2024 note, Dr. Lenihan related that appellant had experienced occipital neuralgia since she experienced a concussion in 2016.

On November 17, 2024 appellant, through counsel, contended that the September 12, 2024 request for reconsideration should be considered timely filed.

By decision dated November 25, 2024, OWCP denied appellant's request for reconsideration, finding that the request 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.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

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). A right to reconsideration within one year accompanies any subsequent merit decision on the issues, including a Board decision. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4a (September 2020); *see also B.W.*, Docket No. 25-0475 (issued May 30, 2025); *W.A.*, Docket No. 17-0225 (issued May 16, 2017).

⁸ Federal (FECA) Procedure Manual, *id.* at 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 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.¹⁵

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁶ The claimant must present evidence, which on its face shows that OWCP made an error.¹⁷ 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.¹⁸ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁹

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 by the Board on July 26, 2022. As appellant's request for reconsideration was not received by OWCP until September 12, 2024, more than one year after the July 26, 2022 decision, pursuant to 20 C.F.R. § 10.607(a), the request for reconsideration was untimely filed.²⁰ Consequently, appellant must demonstrate clear evidence of error by OWCP in denying expansion of the acceptance of the claim.²¹

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 Federal (FECA) Procedure Manual, *supra* note 7 at Chapter 2.1602.5a (September 2020); see also *J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹⁷ *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

¹⁸ *Id.*

¹⁹ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

²⁰ *Supra* note 7.

²¹ 20 C.F.R. § 10.607(b); *S.C.*, Docket No. 20-1537 (issued April 14, 2021); *id.*, Docket No. 19-0604 (issued September 13, 2019); see *Debra McDavid*, 57 ECAB 149 (2005).

On reconsideration, appellant, through counsel, argued that the September 12, 2024 request for reconsideration was timely. In support of her request for reconsideration, appellant submitted reports dated March 22 and July 6, 2023, and January 29, 2024 from Dr. Lenihan, diagnosing occipital neuralgia and relating that appellant had experienced this condition since her 2016 employment injury. She also provided notes from an acute care nurse practitioner.

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.²²

The Board thus finds that appellant's request for reconsideration did not show on its face that OWCP committed an error in denying expansion of the acceptance of her claim to include additional conditions as causally related to, or as a consequence of the accepted February 16, 2016 employment injury.²³ 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.

²² *U.C.*, Docket No. 19-1753 (issued June 10, 2020).

²³ *S.C.*, Docket No. 19-1424 (issued September 15, 2020).

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 18, 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