

The issues are: (1) whether OWCP properly denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error; and (2) whether OWCP properly denied appellant's request for oral hearing, pursuant to 5 U.S.C. § 8124(b).

## **FACTUAL HISTORY**

This case has previously been before the Board. The facts and circumstances as set forth in the Board's prior order and decisions are incorporated herein by reference.<sup>1</sup> The relevant facts are as follows.

On July 12, 2000 appellant, then a 39-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her lower back when a rest bar came off the tract causing her to fall while in the performance of duty. She stopped work on July 13, 2000. On August 7, 2000 OWCP accepted the claim for lumbar strain. It subsequently expanded the acceptance of the claim to include the additional conditions of bilateral sprain of the hip and thigh and aggravation of lumbar degenerative disc disease. It subsequently paid appellant compensation on the supplemental rolls effective July 23, 2003 and on the periodic rolls effective October 5, 2003.

By decision dated December 20, 2005, OWCP terminated appellant's wage-loss compensation and medical benefits, effective December 25, 2005. Appellant submitted additional medical evidence. By decision dated April 18, 2006, OWCP's hearing representative affirmed the December 20, 2005 termination decision. Appellant timely appealed this decision to the Board, and by decision dated January 16, 2007, the Board affirmed the April 18, 2006 decision, finding that OWCP properly terminated her wage-loss compensation and medical benefits, effective December 25, 2005; that she had no continuing work-related disability or medical residuals; and that she had not met her burden of proof to establish a consequential emotional condition.<sup>2</sup>

By decisions dated September 15 and December 18, 2006, and May 9, 2007, OWCP found that appellant had forfeited her entitlement to compensation from July 13, 2004 through August 27, 2005, resulting in an overpayment of compensation in the amount of \$18,031.15 for which she was at fault.

On March 15, 2007 appellant filed a claim for compensation (Form CA-7) for a schedule award.

Appellant filed a timely appeal to the Board from the September 15 and December 18, 2006 and May 9, 2007 forfeiture and overpayment decisions. By decision dated May 19, 2008, the Board affirmed, finding that appellant knowingly failed to report her earnings and employment activity, such that she forfeited her entitlement to FECA compensation for the period July 13, 2004 through August 27, 2005 resulting in an overpayment in the amount of \$18,031.15. It further determined that she was at fault in the creation of the overpayment and thereby precluded from waiver of recovery.<sup>3</sup>

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<sup>1</sup> *Order Remanding Case*, Docket No. 09-1305 (issued April 28, 2010); Docket No. 08-370 (issued October 21, 2008); Docket No. 07-1557 (issued May 19, 2008); Docket No. 06-1259 (issued January 16, 2007); Docket No. 02-1373 (issued May 6, 2003).

<sup>2</sup> Docket No. 06-1259 (issued January 16, 2007).

<sup>3</sup> Docket No. 07-1557 (issued May 19, 2008).

By decision dated October 2, 2007, OWCP denied appellant's claim for a schedule award finding that the medical evidence did not establish permanent impairment of a scheduled member or function of the body.

Appellant appealed the October 2, 2007 decision to the Board.<sup>4</sup>

By decision dated October 21, 2008,<sup>5</sup> the Board found an unresolved conflict of medical opinion and remanded the case for further development.<sup>6</sup>

By *de novo* decision dated August 3, 2015, OWCP denied appellant's schedule award claim.

On August 9, 2015 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated June 1, 2016, OWCP's hearing representative affirmed the August 3, 2015 schedule award decision.

On April 17 and May 15, 2017 appellant requested reconsideration of the June 1, 2016 schedule award decision.

By decision dated March 23, 2018, OWCP denied modification of its prior schedule award decision.

On January 26, 2022 appellant requested reconsideration of OWCP's termination, forfeiture and resulting overpayment, and schedule award decisions.

In support of her reconsideration request, appellant submitted a July 2, 2019 letter from the Office of Personnel Management (OPM) indicating that the employing establishment erroneously removed her on June 10, 2013 and that she was eligible for unreduced retirement.

Appellant resubmitted her October 2006 bill of indictment. In an October 30, 2019 decision, the District Court dismissed appellant's civil complaint against OWCP and the employing establishment without prejudice. Appellant denied all charges and debts. She sought financial relief, punitive damages, negligence, and personal injury. Appellant resubmitted excerpts from OIG investigative memoranda dated April 12, 2000, February 28 and March 1, 2001,

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<sup>4</sup> On January 18, 2008 appellant requested reconsideration of the October 2, 2007 schedule award decision from OWCP. By decision dated January 31, 2008, OWCP denied her request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

<sup>5</sup> Docket No. 08-370 (issued October 21, 2008).

<sup>6</sup> In February 2009, appellant filed a notice of recurrence (Form CA-2a) under the present claim, OWCP File No. xxxxxx925. However, OWCP was instead advised to file a claim for a new injury. On March 20, 2009 appellant filed an occupational disease claim (Form CA-2), wherein she alleged injuries to her hips and back due to factors of her federal employment, including that on July 12, 2000 she was injured when a rest bar she sat on came off track. She noted that she first became aware of her condition on July 12, 2000 and realized its relation to her federal employment on January 2, 2009. Appellant's claims under OWCP File Nos. xxxxxx278 and xxxxxx925 have been administratively combined, with the latter serving as the master file.

November 29 and December 9, 2005, and February 27, 2006. Appellant resubmitted a copy of the September 22, 2007 arbitrator's decision. On October 3, 2008 she was placed on community supervision for the period of three years and was ordered to make restitution in the amount of \$6,000.00 in the amount of \$175.00 per month.

Appellant also resubmitted an August 5, 2005 impairment report from Dr. Ronnie D. Shade, a Board-certified orthopedic surgeon, and a portion of an August 15, 2007 report from Dr. Richard N. Brown, a general surgeon and second opinion physician, both of whom utilized the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>7</sup> She further submitted a portion of an August 29, 2016 report from Dr. Jeffrey Haithcock, a Board-certified neuroradiologist. Appellant also provided an August 27, 2016 magnetic resonance imaging (MRI) scan.

By decision dated January 27, 2022, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

Appellant appealed to the Board. By order dated October 17, 2022, the Board set aside the January 27, 2022 decision, finding that OWCP failed to properly explain the findings with respect to the issue presented so that she could understand the basis for the decision. The Board remanded the case for findings of fact and statement of reasons, to be followed by an appropriate decision.<sup>8</sup>

By decision dated January 23, 2023, OWCP again denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On March 6, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated March 9, 2023, OWCP denied appellant's hearing request, pursuant to 5 U.S.C. § 8124(b). It found that she was not entitled to a hearing as a matter of right as she had previously requested reconsideration. OWCP further denied appellant's request as the issues in this case could equally well be addressed by requesting a new reconsideration and submitting additional evidence to OWCP.

### **LEGAL PRECEDENT -- ISSUE 1**

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.<sup>9</sup> 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.<sup>10</sup> Timeliness is determined by the document receipt date, *i.e.*,

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<sup>7</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>8</sup> *Order Remanding Case*, Docket No. 22-0626 (issued October 17, 2022).

<sup>9</sup> 5 U.S.C. § 8128(a); *see T.J.*, Docket No. 21-0586 (issued September 30, 2021); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

<sup>10</sup> 20 C.F.R. § 10.607(a).

the “received date” in OWCP’s Integrated Federal Employees’ Compensation System (iFECS).<sup>11</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>12</sup>

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.<sup>13</sup> OWCP’s 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.<sup>14</sup> In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.<sup>15</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>16</sup> 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.<sup>17</sup>

OWCP’s procedures note that the term clear evidence of error is intended to represent a difficult standard. 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 required further development, is not clear evidence of error.<sup>18</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>19</sup>

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<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

<sup>12</sup> *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>13</sup> 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).

<sup>14</sup> *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). See also 20 C.F.R. § 10.607(b); *supra* note 11 at Chapter 2.1602.5 (September 2020).

<sup>15</sup> *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>16</sup> *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 11 at Chapter 2.1602.5(a) (September 2020).

<sup>17</sup> *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

<sup>18</sup> *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 11 at Chapter 2.1602.5a (September 2020).

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

### **ANALYSIS -- ISSUE 1**

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<sup>20</sup> and procedures<sup>21</sup> 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 issue(s).<sup>22</sup> The most recent merit decisions addressing appellant's termination and forfeiture/overpayment were the January 16, 2007 and May 19, 2008 decisions of the Board. The most recent merit decision addressing her request for a schedule award was the March 23, 2018 OWCP decision. As her request for reconsideration was not received by OWCP until January 26, 2022, more than one year after the January 16, 2007, May 19, 2008, and March 23, 2018 decisions, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error.

The Board finds that appellant has not demonstrated clear evidence of error. With regard to the underlying issues of termination and forfeiture/overpayment, the Board notes that it previously affirmed the December 20, 2005, September 15 and December 18, 2006 and May 9, 2007 OWCP decisions which adjudicated these issues. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>23</sup> With regard to the underlying issue of appellant's schedule award claim, she resubmitted an August 5, 2005 impairment report from Dr. Shade and a portion of an August 15, 2007 report from Dr. Brown, both utilizing the fifth edition of the A.M.A., *Guides*.<sup>24</sup> She further submitted a portion of an August 29, 2016 report from Dr. Haithcock and an August 27, 2016 MRI scan. Even the submission of a detailed well-rationalized 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.<sup>25</sup> The evidence noted, therefore, does not manifest on its face that OWCP committed an error in its March 23, 2018 decision.

### **LEGAL PRECEDENT -- ISSUE 2**

A claimant dissatisfied with an OWCP decision shall be afforded an opportunity for either an oral hearing or a review of the written record.<sup>26</sup> Section 8124(b) of FECA, concerning a

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<sup>20</sup> 20 C.F.R. § 10.607(a); *see J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Alberta Dukes*, 56 ECAB 247 (2005).

<sup>21</sup> *Supra* note 11 at Chapter 2.1602.4.

<sup>22</sup> 20 C.F.R. § 10.607(b).

<sup>23</sup> *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1988).

<sup>24</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>25</sup> *Supra* note 11 at Chapter 2.1602.5(a) (February 2016); *see E.G.*, Docket No. 20-0974 (issued February 26, 2021); *G.L.*, Docket No. 18-0852 (issued January 14, 2020).

<sup>26</sup> 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.615.

claimant's entitlement to a hearing, states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his or her claim before a representative of the Secretary."<sup>27</sup> OWCP's regulations further explain that the claimant must have not previously submitted a reconsideration request (whether or not it was granted) on the same decision.<sup>28</sup> Although a claimant who has previously sought reconsideration is not, as a matter of right, entitled to a hearing or review of the written record, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing following reconsideration.<sup>29</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied appellant's request for an oral hearing, pursuant to 5 U.S.C. § 8124(b).

On January 26, 2022 appellant requested reconsideration of OWCP's December 20, 2005 decision. By decision dated January 23, 2023, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. Subsequently, on March 6, 2023, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. As she had previously requested reconsideration, she was not entitled to an oral hearing as a matter of right under 5 U.S.C. § 8124(b)(1).<sup>30</sup> OWCP properly exercised its discretion and determined that the issue in the case could be equally well addressed through a request for reconsideration and the submission of new evidence.<sup>31</sup> Therefore, the Board finds that OWCP, in its March 9, 2023 decision, properly denied appellant's March 6, 2023 request for an oral hearing.

### **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. The Board further finds that OWCP properly denied her request for an oral hearing, pursuant to 5 U.S.C. § 8124(b).

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<sup>27</sup> *Id.* at § 8124(b)(1).

<sup>28</sup> *Id.*

<sup>29</sup> See *H.T.*, Docket No. 20-1318 (issued April 27, 2021); *E.S.*, Docket No. 19-1144 (issued August 3, 2020); *J.C.*, Docket No. 19-1293 (issued December 16, 2019); *T.M.*, Docket No. 18-1418 (issued February 7, 2019); *M.W.*, Docket No. 16-1560 (issued May 8, 2017); *D.E.*, 59 ECAB 438 (2008); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

<sup>30</sup> 20 C.F.R. § 10.616(a); *S.L.*, Docket No. 24-0312 (issued May 14, 2024); *R.B.*, Docket No. 22-0755 (issued October 28, 2022); *J.H.*, Docket No. 17-1796 (issued February 6, 2018).

<sup>31</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 23 and March 9, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 17, 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