

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

M.S., Appellant)	
)
)
and)	Docket No. 25-0417
		Issued: June 18, 2025
U.S. POSTAL SERVICE, FLUSHING POST OFFICE, Flushing, NY, Employer)	
)
)

Appearances:

Case Submitted on the Record

Appellant, pro se

Office of Solicitor, for the Director

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 24, 2025 appellant filed a timely appeal from a February 12, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from the last merit decision dated March 18, 2022, 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 Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Appellant requested that the Board consider the evidence of record as he had established his emotional condition claim. Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because the Board lacks jurisdiction over the merits of this case and, thus, the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

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

This case has previously been before the Board.³ The facts and circumstances as presented in the prior order are incorporated herein by reference. The relevant facts are as follows.

On July 29, 2021 appellant, then a 63-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on July 21, 2020, he developed an emotional/stress-related condition in the performance of duty. He alleged that his condition was caused by the employing establishment's discrimination and violation of a job offer, as well as psychiatric violence. OWCP assigned this claim OWCP File No. xxxxxx932.⁴ On the reverse side of the claim form, E.C., a customer service manager for the employing establishment, noted that appellant stopped work on July 11, 2017.

By decision dated September 9, 2021, OWCP denied appellant's emotional condition claim, finding that he had not established that the specific incident(s) occurred, as alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

On September 17, 2021 appellant, through his then-representative, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 11, 2022.

By decision dated March 18, 2022, OWCP's hearing representative modified the September 9, 2021 decision to find that a specific incident occurred as alleged, *i.e.*, that the employing establishment issued a notice of removal. However, the claim remained denied as the evidence of record was insufficient to establish a compensable employment factor.⁵

On September 6, 2022 appellant, through his then-representative, requested reconsideration.

³ *Order Remanding Case*, Docket No. 25-0136 (issued December 26, 2024).

⁴ Appellant has a prior August 1, 2000 occupational disease (Form CA-2) under OWCP File No. xxxxxx781, which was accepted for cervical spondylosis without myelopathy. He also filed previous traumatic injury claims. Under OWCP File No. xxxxxx352, appellant filed a Form CA-1 on August 28, 2014, alleging that on October 24, 2013 he experienced severe right shoulder and neck pain while in the performance of duty. Under OWCP File No. xxxxxx782, he filed a Form CA-1 on January 9, 2020 alleging that on January 19, 2017 he developed gastric cancer as a result of stress from work and discrimination. OWCP has administratively combined OWCP File Nos. xxxxxx352, xxxxxx782, and xxxxxx932, and xxxxxx781, with the latter serving as the master file.

⁵ At the direction of OWCP's hearing representative, OWCP administratively combined OWCP File Nos. xxxxxx352, xxxxxx782, and xxxxxx932, and xxxxxx781, with the latter serving as the master file.

By decision dated September 22, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On June 21, 2023 OWCP received a June 17, 2023 statement for V.J., a coworker, who stated that she personally witnessed two incidents involving appellant. V.J. noted that the incident she witnessed occurred on August 4, 2016, and not August 1, 2016, where a customer yelled at appellant while he was assisting another customer in the lobby. On June 18, 2016 she witnessed a second incident with N.F., a coworker, who yelled at appellant.

On September 21, 2024 appellant, through his then-representative, requested reconsideration of the March 18, 2022 decision. He asserted that the evidence established two compensable factors of employment when appellant was yelled at by a coworker on June 18, 2016 and was yelled at by a customer on August 4, 2016, with the employing establishment doing nothing to correct these incidents. In support of his request, appellant resubmitted the June 17, 2023 witness statement from V.J., a coworker. He also submitted a timesheet for July 30 to August 5, 2016, and an April 17, 2015 modified job offer.

By decision dated September 30, 2024, OWCP denied appellant's September 21, 2024 reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On November 24, 2024 appellant, through his then-representative, filed a timely appeal from the September 30, 2024 nonmerit decision of OWCP. By order dated December 26, 2024, the Board set aside the September 30, 2024 decision.⁶ The Board found that OWCP had summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.⁷ The Board remanded the case for findings of fact and a statement of reasons, to be followed by an appropriate decision on appellant's reconsideration request.

By decision dated February 12, 2025, OWCP again denied appellant's September 21, 2024 request for reconsideration of the merits of the claim, 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.⁸ OWCP's regulations⁹ establish a one-year time limitation for requesting reconsideration which begins on the date of the original OWCP merit decision. A right to

⁶ *Order Remanding Case*, Docket No. 25-0136 (issued December 26, 2024).

⁷ *J.F.*, Docket No. 24-0883 (issued December 2, 2024); *M.D.*, Docket No. 20-0868 (issued April 28, 2021); *TP.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607.

⁸ 5 U.S.C. § 8128(a); *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).

⁹ 20 C.F.R. § 10.607(a).

reconsideration within one-year also accompanies any subsequent merit decision on the issues.¹⁰ 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).¹¹ Imposition of this one-year filing limitation does not constitute an abuse of discretion.¹²

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.¹³ 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.¹⁴

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹⁵ 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.¹⁶

OWCP’s procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁷ 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

¹⁰ *B.J.*, *supra* note 8; *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).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

¹² *B.J.*, *supra* note 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).

¹³ 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).

¹⁴ *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 11 at Chapter 2.1602.5 (September 2020).

¹⁵ *B.J.*, *id.*; *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 11 at Chapter 2.1602.5a (September 2020).

¹⁶ *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).

¹⁷ *B.J.*, *id.*; *G.G.*, *supra* note 12; see also 20 C.F.R. § 10.607(b); *supra* note 11 at Chapter 2.1602.5 (September 2020).

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

As noted above, a request for reconsideration must be received within one year of the date of the last merit decision for which review is sought.²⁰ As appellant's request for reconsideration was not received by OWCP until September 21, 2024, more than one year after the March 18, 2022 merit decision, it was untimely filed. Consequently, the request must demonstrate clear evidence of error by OWCP in its March 18, 2022 decision.

On reconsideration, appellant's then-representative argued that the evidence established two compensable factors of employment. He submitted a June 17, 2023 witness statement from V.J., describing an August 4, 2016 incident where a customer yelled at appellant, and a June 18, 2016 incident during which appellant was yelled at by N.F. Appellant's then-representative also submitted a timesheet for July 30 to August 5, 2016, and an April 17, 2015 modified job offer. This evidence, however, does not raise a substantial question as to the correctness of OWCP's March 18, 2022 decision. 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.²¹ This evidence, therefore, does not establish on its face that OWCP committed an error in its March 18, 2022 decision.²² Accordingly, OWCP properly denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.²³

¹⁸ *B.J.*, *id.*; *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *id.* at Chapter 2.1602.5a (September 2020).

¹⁹ *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).

²⁰ *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, *supra* note 16; *see supra* note 11 at Chapter 2.1602.5a (September 2020); *see also J.S.*, *supra* note 18.

²¹ *A.M.*, Docket No. 24-0547 (issued July 8, 2024); *U.C.*, Docket No. 19-1753 (issued June 10, 2020).

²² *S.C.*, Docket No. 19-1424 (issued September 15, 2020).

²³ *Z.M.*, Docket No. 24-0547 (issued July 8, 2024); *J.B.*, Docket No. 20-0630 (issued April 21, 2021).

CONCLUSION

The Board finds that 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.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 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