

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

D.Z., Appellant )  
and ) Docket No. 25-0422  
U.S. POSTAL SERVICE, CLEVELAND )  
PROCESSING & DISTRIBUTION CENTER, )  
Cleveland, OH, Employer )  
Issued: June 26, 2025 )

*Appearances:*  
*Appellant, pro se*  
*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 March 24, 2025, appellant filed a timely appeal from a December 5, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision, dated March 16, 2021, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>2</sup>

## 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.

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the December 5, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

## **FACTUAL HISTORY**

On December 5, 2019, appellant, then a 47-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed right hand and wrist conditions due to factors of his federal employment involving his repetitive employment duties of grabbing, twisting, and turning a handle to operate machinery, loading and unloading mail off trucks, and pushing and pulling heavy containers. He noted that he first became aware of his condition and realized its relation to his federal employment on November 5, 2019.<sup>3</sup>

By decision dated January 15, 2020, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted factors of his federal employment.

On January 28, 2020, appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

By decision dated March 26, 2020, OWCP's hearing representative affirmed the January 15, 2020 decision.<sup>4</sup>

On August 4, 2020, appellant, through then-counsel, requested reconsideration.

By decision dated March 16, 2021, OWCP denied modification of the March 26, 2020 decision.

Appellant subsequently submitted additional evidence, including an April 27, 2021 request for authorization for an imaging study.

Appellant also submitted a January 10, 2024 operative report, wherein Dr. Scott Ciaccia, a Board-certified orthopedic surgeon, reported that appellant underwent right carpal tunnel release surgery.

In hospital records dated May 3, 2024, Dr. Katie Imhof, Board-certified in emergency medicine, noted appellant's complaints of abdominal pain, and diagnosed abdominal pain.

In a September 3, 2024 report, Dr. Hyun Kim, an osteopath specializing in physiatry, evaluated appellant and diagnosed bilateral carpal tunnel syndrome. He opined that his diagnosis was directly caused by the repetitive employment duties as a mail handler for the employing establishment over "the last 26 years where he had used a pallet jack rider, pushing and pulling containers weighing from 100 to 2,000 pounds to load and unload trucks, picking up trays of mail, and operating the heavy equipment causing vibrations to go through his hands, wrists, and arms

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<sup>3</sup> OWCP assigned the present claim OWCP File No. xxxxxx133. The record reflects that appellant previously filed a Form CA-2 on January 17, 2014 for injuries sustained to his right elbow due to factors of his federal employment involving repetitive employment duties of operating a forklift. OWCP assigned that claim OWCP File No. xxxxxx258 and accepted it for right medial epicondylitis and right elbow and forearm sprain.

<sup>4</sup> OWCP's hearing representative instructed OWCP to administratively combine OWCP File Nos. xxxxxx133 and xxxxxx258 due to cross referencing of the claim. On March 27, 2020, OWCP administratively combined OWCP File Nos. xxxxxx258 and xxxxxx133, with the latter serving as the master file.

for roughly 60 hours a week.” Dr. Kim further explained how carpal tunnel syndrome resulted from repetitive employment duties through motions impacting the median nerve.

OWCP also received magnetic resonance imaging (MRI) scans of the cervical spine and right elbow dated April 22, 2024.

On November 27, 2024, appellant requested reconsideration.

By decision dated December 5, 2024, 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.<sup>5</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>6</sup> 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).<sup>7</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>8</sup>

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.<sup>9</sup> If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review.<sup>10</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by OWCP.<sup>11</sup> The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.<sup>12</sup> Evidence that does not raise a substantial question concerning the correctness of OWCP’s decision is insufficient to demonstrate

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

<sup>6</sup> 20 C.F.R. § 10.607(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

<sup>8</sup> *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).

<sup>9</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>10</sup> *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).

<sup>11</sup> *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).

<sup>12</sup> *J.D.*, Docket No. 19-1836 (issued April 6, 2020); *Leone N. Travis*, 43 ECAB 227 (1999).

clear evidence of error.<sup>13</sup> 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.<sup>14</sup>

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.<sup>15</sup> The claimant must present evidence, which on its face shows that OWCP made an error.<sup>16</sup> 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.<sup>17</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>18</sup>

## 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 March 16, 2021. As appellant's request for reconsideration was not received by OWCP until November 27, 2024, more than one year after the March 16, 2021 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.<sup>19</sup>

In support of his most recent request for reconsideration, appellant submitted an April 29, 2021 request for authorization for an imaging study, a January 10, 2024 operative report for right carpal tunnel release surgery, April 22, 2024 MRI scan studies, May 3, 2024 hospital records, and a September 3, 2024 report from Dr. Kim diagnosing bilateral carpal tunnel syndrome causally related to the accepted factors of his federal employment.

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.<sup>20</sup>

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<sup>13</sup> *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>14</sup> *T.N.*, Docket No. 18-1613 (issued April 29, 2020).

<sup>15</sup> See *supra* note 7 at Chapter 2.1602.5a (September 2020); see also *J.S.*, Docket No. 16-1240 (issued December 1, 2016).

<sup>16</sup> *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

<sup>17</sup> *Id.*

<sup>18</sup> *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

<sup>19</sup> 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).

<sup>20</sup> *U.C.*, Docket No. 19-1753 (issued June 10, 2020).

The Board thus finds that appellant's request for reconsideration did not show on its face that OWCP committed an error in denying his occupational disease claim.<sup>21</sup> 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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 5, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 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

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<sup>21</sup> S.C., Docket No. 19-1424 (issued September 15, 2020).