

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

G.E., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
WASHINGTON VA MEDICAL CENTER,
Washington, DC, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 25-0189
Issued: March 5, 2025**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

JURISDICTION

On December 18, 2024 appellant, through counsel, filed a timely appeal from a November 1, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated January 27, 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 to review the merits of this case.³

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.*

³ The Board notes that, following the November 1, 2024 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* 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.*

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 June 20, 2021 appellant, then a 47-year-old registered nurse, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome, bilateral tendinitis/tendinosis, and epicondylitis of the left hand due to factors of her federal employment, including repetitive keyboarding and using a telephone. OWCP accepted the claim for bilateral carpal tunnel syndrome, medial epicondylitis at the elbows, ulnar nerve lesion of an unspecified limb, and ulnar nerve lesion of the right upper limb.⁵

In a September 14, 2021 report, Dr. George Yeh, a Board-certified orthopedic surgeon, recounted a history of injury and treatment. He noted that appellant had been taken off work on September 13, 2021. Dr. Yeh diagnosed worsening bilateral carpal tunnel syndrome, greater on the left. He administered bilateral intra-articular injections.

On October 10, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work during the period September 26 through October 9, 2021.

In an October 13, 2021 statement, the employing establishment informed OWCP that there was no work available within appellant's current medical restrictions.⁶

In an October 18, 2021 duty status report (Form CA-17), Dr. Ernest Africano, a Board-certified internist, advised that appellant able to work eight hours a day with restrictions.

In a development letter dated November 17, 2021, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation for the period September 26 through October 9, 2021. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

⁴ *Order Remanding Case*, Docket No. 24-0856 (issued September 27, 2024).

⁵ Previously, under OWCP File No. xxxxxx327, OWCP accepted that on January 22, 2015, appellant sustained a triangular fibrocartilage complex (TFCC) tear of the right wrist when she lifted patients while in the performance of duty. Under OWCP File No. xxxxxx817, it accepted that on February 15, 2019 appellant sustained a sprain of the left wrist and hand when she fell as the chair in which she was about to sit rolled out from under her while in the performance of duty. OWCP has not administratively combined these claims.

⁶ The employing establishment noted that following the accepted February 15, 2019 left wrist and hand sprain under OWCP File No. xxxxxx817, it placed appellant in a light-duty assignment. It explained that the accepted conditions under OWCP File No. xxxxxx181 made it difficult not to aggravate the prior employment injury.

In response, appellant submitted additional reports by Dr. Africano dated November 8 and December 6, 2021, wherein he provided or affirmed work restrictions from September 10 through November 30, 2021 due to worsening carpal tunnel and cubital tunnel syndromes.

In a December 7, 2021 report, Dr. Yeh recounted that appellant had been off work commencing September 13, 2021 due to significant bilateral hand, wrist, and upper extremity pain.⁷

By decision dated January 27, 2022, OWCP denied appellant's claim for disability from work during the period September 26 through November 29, 2021. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period causally related to the accepted employment injury.

On March 11, 2022 OWCP received a March 10, 2022 report by Dr. Africano wherein he opined that appellant was temporarily totally disabled from work commencing September 13, 2021 "due to the physical deficit in her hands, wrists, arms, and neck from repetitive movements that she sustained at work."

Thereafter, OWCP received a November 16, 2021 report wherein Dr. Africano noted that appellant had been off work commencing September 10, 2021. It also received reports dated July 26, 2021 through July 6, 2023, wherein Dr. Africano provided or affirmed work restrictions.

Appellant underwent a left carpal tunnel release on February 2, 2022, left elbow ulnar nerve release on June 8, 2022, and right ulnar nerve release and right carpal tunnel release on April 5, 2023. OWCP received a series of progress notes by Dr. Yeh for the period commencing February 15, 2022. In a January 27, 2023 report, Dr. Yeh indicated that appellant had been off work commencing September 13, 2021 due to bilateral upper extremity conditions.

OWCP also received reports dated September 26 and October 25, 2022 wherein, Dr. Cary-Walter Closson, a Board-certified anesthesiologist, diagnosed bilateral carpal tunnel syndrome; reports dated December 6, 2022 through April 3, 2024 wherein Dr. James J. Lee, a Board-certified orthopedic surgeon, diagnosed left carpal tunnel syndrome; and reports dated March 16, 2023 through April 30, 2024 wherein Dr. Nicholas Mata, a Board-certified physiatrist, diagnosed left lateral epicondylitis.⁸

In a May 7, 2024 letter, appellant contended that on March 11, 2022 she requested reconsideration of the January 27, 2022 decision and submitted new medical evidence.

In a June 11, 2024 letter, OWCP noted that it had not received a request for reconsideration of the January 27, 2022 decision.

On July 22, 2024 appellant requested reconsideration. In support thereof, she submitted the appeal rights form from the January 27, 2022 decision, signed on March 10, 2022. Appellant enclosed a July 9, 2024 statement wherein she asserted that on March 10, 2022 submitted

⁷ Appellant also submitted September 5, 2020 and April 29, 2021 electromyogram/nerve conduction velocity (EMG/NCV) studies of the bilateral upper extremities.

⁸ OWCP also received a November 15, 2021 magnetic resonance imaging (MRI) scan of the cervical spine, November 23, 2022 MRI scans of the elbows, and a December 6, 2022 EMG/NCV study of the left upper extremity. Additionally, it received physical therapy treatment notes dated January 24, 2022 through September 7, 2023.

documents to OWCP on her behalf “for reconsideration” of the January 27, 2022 decision. She also provided a copy of a March 11, 2022 e-mail from T.V., indicating that a narrative had been uploaded on her behalf and assigned an OWCP document control number (DCN).

By decision dated August 2, 2024, OWCP denied appellant’s request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.⁹

Appellant, through counsel, filed an appeal with the Board.¹⁰

OWCP also received physical therapy treatment notes, and a functional capacity evaluation report dated August 22, 2024.

By order dated September 27, 2024,¹¹ the Board set aside OWCP’s August 2, 2024 decision, finding that the case was not in posture for decision as OWCP did not address Dr. Africano’s reports dated September 20 through November 16, 2021 regarding the claimed period of disability. The Board remanded the case for OWCP to review all evidence of record and issue an appropriate decision.

Thereafter, OWCP received occupational therapy treatment notes dated September 4 through October 18, 2024.

OWCP also received appellant’s October 15, 2024 letter alleging that an August 21, 2024 functional capacity evaluation aggravated the accepted conditions such that she sought treatment at a hospital emergency department.

By decision dated November 1, 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.¹² To be entitled to a merit review of an OWCP decision, a request for reconsideration must be received by OWCP within one year of the date of OWCP’s decision for which review is sought.¹³ Timeliness is determined by the document receipt date of the request for reconsideration as is indicated by the “received date” in the Integrated Federal Employees’ Compensation System

⁹ Thereafter, OWCP received a June 27, 2024 MRI scan of the left wrist, and an August 6, 2024 physical therapy treatment note.

¹⁰ OWCP received a November 12, 2023 notification of personnel action (Standard Form (SF) 50) indicating that appellant separated from the employing establishment effective that date.

¹¹ See *supra* note 4.

¹² 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

¹³ 20 C.F.R. § 10.607(a).

(iFECS).¹⁴ The Board has found that the imposition of this one-year filing limitation does not constitute an abuse of discretion.¹⁵

OWCP may not deny a request for reconsideration solely because it was untimely filed. When a request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether the request demonstrates clear evidence of error.¹⁶ OWCP's regulations and procedures provide that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's request for reconsideration demonstrates clear evidence of error on the part of OWCP.¹⁷

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue decided by OWCP.¹⁸ The evidence must be positive, precise, and explicit, and it must manifest on its face that OWCP committed an error.¹⁹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.²⁰ 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 evidence of error on the part of OWCP. The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP such that it abused its discretion in denying merit review in the face of such evidence.²¹ The Board notes that clear evidence of error is intended to represent a difficult standard.²² Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.²³

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

¹⁵ *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).

¹⁶ 20 C.F.R. § 10.607(b); *T.C.*, Docket No. 19-1709 (issued June 5, 2020); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

¹⁷ *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 14 at Chapter 2.1602.5a (September 2020).

¹⁸ *K.S.*, Docket No. 25-0142 (issued January 27, 2025); *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).

¹⁹ 20 C.F.R. § 10.607(b); *B.W.*, Docket No. 19-0626 (issued March 4, 2020); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

²⁰ See *G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

²¹ *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

²² *R.K.*, Docket No. 19-1474 (issued March 3, 2020).

²³ *U.C.*, *supra* note 21.

ANALYSIS

The Board finds that OWCP properly denied appellant's request of reconsideration, as it was untimely filed and failed to demonstrate clear evidence of error.

The last merit decision was issued on January 27, 2022. While appellant asserted in a July 9, 2024 statement that her physician's office had filed a request for reconsideration on her behalf on March 10, 2022, the record supports that the documents submitted to OWCP on March 10, 2022 were medical in nature, without mention of a request for reconsideration. As the most recent request for reconsideration was not received by OWCP until July 22, 2024, more than one year after the January 27, 2022 merit decision, pursuant to 20 C.F.R. § 10.607(a), the Board finds that the request for reconsideration was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in denying the claim.²⁴

The Board finds that appellant has not demonstrated clear evidence of error. The underlying issue is whether appellant has established disability from work during the period September 26 through October 9, 2021 due to her accepted occupational conditions.

In support of her untimely request for reconsideration, appellant submitted a November 16, 2021 report, wherein Dr. Africano indicated that appellant had been off work commencing September 10, 2021. Similarly, in a January 27, 2023 report, Dr. Yeh indicated that appellant had been off work commencing September 13, 2021 due to bilateral upper extremity conditions. The additional reports by Dr. Africano and Dr. Yeh received by OWCP following its January 27, 2022 decision, as well as the reports of Drs. Closson, Lee, and Mata, do not address appellant's condition for the period September 26 through October 19, 2021. Appellant also submitted September 5, 2020 and April 29, 2021 EMG/NCV studies of the bilateral upper extremities, a November 15, 2021 MRI scan of the cervical spine, November 23, 2022 MRI scans of the elbows, a December 6, 2022 EMG/NCV study of the left upper extremity, and a June 27, 2024 MRI scan of the left wrist. OWCP also received physical and occupational therapy notes.

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.²⁵ Thus the Board finds that the evidence submitted in support of appellant's untimely request for reconsideration fails to demonstrate clear evidence of error.

Accordingly, the Board finds that OWCP properly denied appellant's July 22, 2024 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

CONCLUSION

The Board finds that OWCP properly denied appellant's request of reconsideration, as it was untimely filed and failed to demonstrate clear evidence of error.

²⁴ 20 C.F.R. § 10.607(b); *L.S.*, Docket No. 22-1327 (issued August 19, 2024); *J.N.*, Docket No. 23-0974 (issued May 14, 2024); *A.S.*, Docket No. 24-0104 (issued March 25, 2024); see *Debra McDavid*, 57 ECAB 149 (2005).

²⁵ *U.C.*, *supra* note 21.

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2025
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board