

² The Board notes that, following the January 2, 2025 decision, appellant submitted additional evidence to OWCP. 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.*

denied appellant's request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On June 6, 2023 appellant, then a 50-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed ulnar impaction syndrome due to factors of his federal employment, including sorting letters, loading packages into a postal truck, lifting gate locks, lifting mail slots, and pushing a mail cart. He noted that he first became aware of his condition and realized its relation to his federal employment on June 25, 2020. Appellant did not stop work.

In an accompanying statement, appellant reported experiencing lingering pain in his hand and wrist in June 2020. He received intra-articular injections that provided temporary relief from symptoms. Appellant reiterated his job duties that he believed caused his injury.

In a June 5, 2023 note, Sydney Elgomayel, a physician assistant, indicated that appellant was incapacitated until surgery.

In a June 14, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. In a separate development letter of even date, it also requested additional information from the employing establishment. OWCP afforded the employing establishment 30 days to respond.

In a follow-up letter dated July 11, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the June 14, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

OWCP subsequently received additional evidence. In a June 1, 2020 report, wherein Dr. Mansour Makhoulf, a Board-certified plastic surgeon, diagnosed triangular fibrocartilage complex (TFCC) pathology, rule out extensor carpi ulnaris tendinitis. On September 28, 2020, he diagnosed flexor carpi ulnaris tendinitis and provided an intra-articular injection.

On January 7, 2021, Dr. Danielle Collons, a Board-certified internist, treated appellant in follow up for worsening right wrist pain. She diagnosed elevated creatinine, right wrist pain, and tobacco use.

On March 1, 2021, Lindsey Sprinkle, a physician assistant, diagnosed carpi ulnaris tendinitis of the right wrist and performed an intra-articular injection. Appellant also submitted several illegible documents and a city carrier job description.

By decision dated August 25, 2023, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted factors of his federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

OWCP subsequently received a July 12, 2024 report, wherein Dr. Florian Miranzadeh, a Board-certified family medicine physician, noted his treatment of appellant for right hand pain and dysfunction. He advised that appellant had a congenital anomaly in his right upper extremity that was aggravated by repetitive duties he performed at his job. Dr. Miranzadeh noted ulnar impact syndrome, which was an anatomical variance in the length of the ulna which predisposed him to abnormal mechanical stress to the musculoskeletal elements of the wrist. He diagnosed carpal tunnel syndrome of the right wrist, carpal tunnel syndrome of the left wrist, and post-traumatic osteoarthritis of the right wrist, and opined that appellant was totally disabled from work. In an attending physician's report (Form CA-20) dated August 21, 2024, Dr. Miranzadeh diagnosed right upper extremity weakness and paresthesia. He responded "Yes" to indicate his opinion that appellant's conditions were caused or aggravated by his employment activity and advised that he was totally disabled commencing June 6, 2023. Dr. Miranzadeh explained that appellant "was performing his job when he felt sharp discomfort with pain."

An August 26, 2024 magnetic resonance imaging (MRI) scan of the right wrist demonstrated postsurgical changes toward the ulnar aspect of the wrist, joint space narrowing of the radiocarpal joint at the articulation with the lunate, and subchondral cystic changes. An MRI scan of the right hand of even date revealed soft tissue swelling on the palmar aspect of the hand and proximal digits, presumably post-traumatic soft tissue bruising.

Electromyogram and nerve conduction velocity (EMG/NCV) studies dated September 16, 2024 revealed bilateral carpal tunnel syndrome, and left and right-sided mild median mononeuropathy with no evidence of cervical radiculopathy or brachial plexopathy.

In response to the development letter, on October 22, 2024, appellant noted that his employment-related activities that contributed to his conditions included lifting packages up to 70 pounds, repetitively turning mailbox keys, opening and closing mailboxes, sorting mail, and opening and closing fences and gates while delivering mail. He reported performing these duties 48 hours per week. Appellant related that he first noticed his condition on October 24, 2019 when he was lifting a box at work and felt a strain in his hand and wrist. He explained that he had no prior injuries to his wrist.

On October 30, 2024, OWCP received *via* the Employees' Compensation Operations & Management Portal (ECOMP), appellant's request for a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated November 13, 2024, OWCP denied appellant's request for a review of the written record, finding that it was untimely filed and thus, as a matter of right, he was not entitled to it. It further exercised its discretion and determined that the issue in this case could equally well be addressed by requesting reconsideration before OWCP, along with the submission of new evidence.

On December 22, 2024, appellant requested reconsideration. No further argument or evidence was received.

By decision dated January 2, 2025, OWCP denied appellant's December 22, 2024 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT -- ISSUE 1

Section 8124(b)(1) of FECA provides that “a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his [or her] claim before a representative of the Secretary.”³ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁴ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking, or the date received in ECOMP, and before the claimant has requested reconsideration.⁵ Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly denied appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

As noted above, a request for a review of the written record must be made within 30 days after the date of the issuance of an OWCP final decision. On October 30, 2024, OWCP received, *via* ECOMP, appellant's request for a review of the written record. As the request was received more than 30 days following issuance of OWCP's August 25, 2023 decision, the Board finds that it was untimely filed. Appellant was, therefore, not entitled to a review of the written record as a matter of right.⁷

Although appellant's request for a review of the written record was untimely filed, OWCP has the discretionary authority to grant the request and it must exercise such discretion.⁸ The Board has held that the only limitation on OWCP's authority is reasonableness. An abuse of discretion

³ *Supra* note 1 at § 8124(b)(1).

⁴ 20 C.F.R. §§ 10.616, 10.617.

⁵ *Id.* at § 10.616(a); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024).

⁶ *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *M.G.*, Docket No. 17-1831 (issued February 6, 2018); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁷ *See K.B.*, Docket No. 21-1038 (issued February 28, 2022); *M.F.*, Docket No. 21-0878 (issued January 6, 2022); *see also P.C.*, *id.*

⁸ *Id.*

is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.⁹ The Board finds that the evidence of record does not establish that OWCP abused its discretion by denying appellant's request for a review of the written record.

Accordingly, the Board finds that OWCP properly denied appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

LEGAL PRECEDENT -- ISSUE 2

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.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.¹¹ 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).¹² Imposition of this one-year filing limitation does not constitute an abuse of discretion.¹³

OWCP may not deny a reconsideration request 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.¹⁴ If a request demonstrates clear evidence of error, OWCP will reopen the case for merit review.¹⁵

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by OWCP. The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence that 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 to merely 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

⁹ See *K.K.*, Docket No. 24-0205 (issued April 23, 2024); *S.I.*, Docket No. 22-0538 (issued October 3, 2022); *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹⁰ 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).

¹¹ 20 C.F.R. § 10.607(a).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

¹³ *R.L.*, Docket No. 18-0496 (issued January 9, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

¹⁴ See 20 C.F.R. § 10.607(b); *G.G.*, Docket No. 18-1074 (issued January 7, 2019); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

¹⁵ *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). See also *id.* at § 10.607(b); *supra* note 5 at Chapter 2.1602.5 (September 2020).

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 and 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 -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

OWCP's regulations²⁰ and procedures²¹ establish a one-year time limitation 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 issues.²² The most recent merit decision was OWCP's August 25, 2023 decision, which denied appellant's claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted factors of his federal employment. As OWCP did not receive his request for reconsideration until December 22, 2024, more than one year after the August 25, 2023 decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in denying his claim.

On reconsideration, appellant did not submit additional argument or evidence in support of his claim.²³ The Board thus finds that appellant's reconsideration request does not raise a substantial question as to the correctness of OWCP's August 25, 2023 merit decision.²⁴ As noted above, the term clear evidence of error is intended to represent a difficult standard and appellant

¹⁶ *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁷ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 5 at Chapter 2.1602.5a (September 2020).

¹⁸ *Id.*

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

²⁰ 20 C.F.R. § 10.607(a); *see F.N.*, Docket No. 18-1543 (issued March 6, 2019); *Alberta Dukes*, 56 ECAB 247 (2005).

²¹ *Supra* note 5 at Chapter 2.1602.4 (February 2016); *see L.A.*, Docket No. 19-0471 (issued October 29, 2019); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

²² 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

²³ *R.M.*, Docket No. 18-1393 (issued February 12, 2019); *J.R.*, Docket No. 07-1112 (issued November 27, 2007).

²⁴ *See T.C.*, Docket No. 19-1709 (issued June 5, 2020); *B.W.*, Docket No. 19-0626 (issued March 4, 2020).

has not shown on its face that OWCP made an error when it denied his occupational disease claim.²⁵

Accordingly, the Board finds that OWCP properly denied appellant's 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 for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b). The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the November 13, 2024 and January 2, 2025 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 7, 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

²⁵ See *supra* note 11.