

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

### **FACTUAL HISTORY**

On September 13, 2022 appellant, then a 46-year-old safety and occupational health manager, filed an occupational disease claim (Form CA-2) alleging that he developed cumulative trauma disorder and repetitive strain in both wrists and possible carpal tunnel syndrome due to factors of his federal employment including daily activities of using the computer keyboard and mouse, and extensive typing. He noted that he first became aware of his condition and realized its relationship to his federal employment on August 14, 2020. Appellant did not stop work.

By decision dated November 10, 2022, OWCP denied appellant's claim, finding that appellant had not submitted medical evidence sufficient to establish a medical diagnosis in connection with the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 6, 2023 appellant underwent electromyogram/nerve conduction velocity (EMG/NCV) studies which demonstrated bilateral ulnar neuropathy. He underwent a cervical magnetic resonance imaging (MRI) scan of even date which demonstrated multilevel spondylotic and facet degenerative changes in the cervical spine at C4-5 with possible C5 radiculopathy.

Appellant also submitted a January 23, 2023 note from Dr. Ashley C. Cogar, a Board-certified orthopedic surgeon. Dr. Cogar diagnosed bilateral hand pain, bilateral cubital tunnel syndrome, and cervical radiculopathy at C5. She opined that the C5 radiculopathy may be the source of appellant's bilateral hand pain.

In an August 24, 2023 report, Dr. John W. Ellis, a Board-certified family practitioner, related findings regarding appellant's cervical spine, elbows, and wrists. He listed appellant's accepted employment duties of prolonged computer work activities with the keyboard and mouse for 90 percent of his workday and a non-ergonomic workstation resulting in an awkward sitting position. Dr. Ellis described his symptoms of pain in his neck exacerbated by repetitive head movements, prolonged flexion of the neck, overhead work, and lifting. On physical examination he found radicular symptoms into the back of his right arm consistent with C5 radiculopathy found on the January 6, 2023 EMG/NCV studies. Dr. Ellis also noted tenderness to palpation over the bilateral paraspinal musculature at C4-7, weakness against resistance in the bilateral shoulder, elbow, and wrist, and decreased two-point discrimination in the C5 nerve distribution of the right upper extremity. He diagnosed cervical strain, cervical disc displacement, cervical radiculopathy, and other disc degeneration in the cervical spine. Dr. Ellis explained that overuse and repetitive trauma injuries developed from accumulation of repeated small injuries or stresses to the musculoskeletal system, that appellant had no prior cervical spine condition, and that injuries to the neck were commonly due to repetitive movements that put pressure on the spine. He opined that appellant developed radicular symptoms in his right upper extremity as a result of his work-related duties. Dr. Ellis concluded that his symptomology was causally related to the overuse and repetitive translation of his head and neck, with overuse of his arms and hands due to cumulative trauma.

On August 31, 2023 appellant requested reconsideration. By decision dated September 5, 2023, OWCP modified its November 10, 2022 decision to find that appellant had established bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome as causally related to his

accepted employment factors. However, OWCP denied expansion of the acceptance of appellant's claim to include additional conditions as causally related to the accepted employment injury.

By decision dated September 5, 2023, OWCP formally accepted appellant's claim for bilateral carpal tunnel syndrome (hands) and bilateral cubital tunnel syndrome (elbows).

In a September 25, 2023 report, Dr. Keley John Booth, a Board-certified anesthesiologist, related appellant's symptoms of neck pain commencing in 2021. On physical examination he found positive right cervical facet tenderness and paraspinal musculature tenderness with limited range of motion of cervical flexion, and pain on cervical extension. Dr. Booth diagnosed cervical facet arthropathy.

Dr. Ellis completed a September 28, 2023 report including additional diagnoses of cervical spondylosis without myelopathy or radiculopathy, facet dysfunction cervical region, cervical facet arthropathy, and occipital neuralgia. He recommended an ergonomic workstation for appellant.

In statements dated July 19, 2023 and April 7, 2025, appellant's supervisor, M.T., related his reports of chronic pain in his neck, elbows, wrists, and hands as a result of work-related activities. He described appellant's employment duties as computer-based tasks including extended typing, mouse use, and monitor viewing and noted that appellant's workstation was not ergonomically designed. M.T. conceded that appellant's previous workstation could have contributed to his symptoms.

In a series of reports dated April 8 through 16, 2025, Dr. Steve Randall, a Board-certified family practitioner, reviewed appellant's accepted employment duties and a June 17, 2024 cervical MRI scan diagnosing spondylosis without myelopathy or radiculopathy, cervical region, cervical disc displacement, cervical disc degeneration, and cervical radiculitis. He opined with a reasonable degree of medical certainty that appellant's diagnosed conditions were work-related injuries. Dr. Randall related that appellant's duties of sitting while performing repetitive tasks required repetitive turning of his head from side to side and repetitive flexion and extension of his neck. He explained that static postures increase the amount of force required to do a task because contraction forces must be applied to hold the body in position through the work shift. Dr. Randall opined that, due to the ergonomic risk factors in his workplace, including awkward postures and static positions, appellant developed the diagnosed neck conditions due to cumulative trauma.

On June 11, 2025 appellant requested reconsideration.<sup>2</sup>

OWCP subsequently received a June 10, 2025 report from Dr. Ellis. Dr. Ellis continued to diagnose cervical disc displacement, cervical radiculopathy, and cervical disc degeneration.

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<sup>2</sup> On April 30, 2025 appellant filed a notice of recurrence (Form CA-2a) alleging that on January 15, 2025 he sustained a recurrence of his August 14, 2020 medical conditions with pain in his wrists, hands, elbows, and neck. On May 27, 2025 OWCP informed appellant that his claim was in an open status for medical treatment due to his accepted conditions.

He found that appellant was experiencing radicular symptoms consistent with C5 nerve involvement. Dr. Ellis further determined that the cumulative occupational demands of his position which required sustained seated posture with forward head inclination, cervical flexion, and static upper body position for extended hours daily, generated repetitive microtrauma to the cervical spine through chronic anterior vertebral compression and posterior tensile loading of the annular fibers. He explained that sustained cervical flexion increased intradiscal pressure anteriorly while simultaneously stretching and weakening the posterior annulus fibrosus which resulted in gradual delamination and tearing of the annular lamellae creating a path for the nucleus pulposus to migrate posteriorly resulting in disc protrusion or displacement consistent with his federal work exposures. Dr. Ellis concluded that appellant's cervical radiculopathy was a direct neurologic complication of occupationally acquired spinal pathology.

On June 11, 2025 Lee Mackin, a physician assistant, provided treatment.

By decision dated July 10, 2025, 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>3</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>4</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>5</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>6</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>7</sup> If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review.<sup>8</sup>

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<sup>3</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>4</sup> 20 C.F.R. § 10.607(a).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

<sup>6</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>7</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>8</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).

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by OWCP.<sup>9</sup> The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.<sup>10</sup> Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.<sup>11</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>12</sup>

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.<sup>13</sup> The claimant must present evidence, which on its face shows that OWCP made an error.<sup>14</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>15</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>16</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 September 5, 2023. As appellant's request for reconsideration was not received by OWCP until June 11, 2025, more than one year after the September 5, 2023 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>17</sup>

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<sup>9</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>10</sup> *J.D.*, Docket No. 19-1836 (issued April 6, 2020); *Leone N. Travis*, 43 ECAB 227 (1999).

<sup>11</sup> *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>12</sup> *T.N.*, Docket No. 18-1613 (issued April 29, 2020).

<sup>13</sup> See *supra* note 5 at Chapter 2.1602.5a (September 2020); see also *J.S.*, Docket No. 16-1240 (issued December 1, 2016).

<sup>14</sup> *D.Z.*, Docket No. 25-0422 (issued June 26, 2025); *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

<sup>15</sup> *Id.*

<sup>16</sup> *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

<sup>17</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).

In support of the untimely request for reconsideration, OWCP received reports from Dr. Ellis dated September 28, 2023 and June 10, 2025, and reports from Dr. Randall dated April 8 through 16, 2025. The Board finds that although Drs. Ellis and Randall opined that the acceptance of appellant's claim should be expanded to include additional cervical conditions, these reports are insufficient to demonstrate clear evidence of error. The Board notes that clear evidence of error is intended to represent a difficult standard.<sup>18</sup> The Board has long held that even 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>19</sup> It is merely not enough to establish that the evidence could be construed so as to produce a contrary conclusion.<sup>20</sup>

In support of his June 11, 2025 request for reconsideration, appellant also submitted a September 25, 2023 report by Dr. Booth, wherein he noted findings on examination, listed diagnoses, and opined that the accepted work factors accelerated, aggravated, and contributed to additional cervical conditions. 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>21</sup>

Appellant also submitted a report from a physician assistant. However, this evidence is irrelevant as the Board has held that reports from a physician assistant are of no probative value as they do not constitute competent medical evidence under FECA.<sup>22</sup> Consequently, this report is insufficient to demonstrate clear evidence of error by OWCP with respect to the underlying medical issue.

As noted above, the term clear evidence of error is intended to represent a difficult standard.<sup>23</sup> The Board thus finds that appellant's request for reconsideration did not show on its face that OWCP committed an error in denying expansion of the acceptance of his claim to include additional conditions.<sup>24</sup> Accordingly, the Board finds that OWCP properly denied

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<sup>18</sup> See *E.R.*, Docket No. 24-0681 (issued July 29, 2024); *K.W.*, Docket No. 19-1808 (issued April 2, 2020); *J.S.*, Docket No. 16-1240 (issued December 1, 2016).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Section 8101(2) of FECA provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *Y.B.*, Docket No. 21-0092 (issued October 15, 2021) (reports from a physician assistant are of no probative value as they do not constitute competent medical evidence); *T.S.*, Docket No. 19-0056 (issued July 1, 2019) (physician assistants are not considered physicians under FECA).

<sup>23</sup> *Supra* note 13.

<sup>24</sup> *S.C.*, Docket No. 19-1424 (issued September 15, 2020).

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 July 10, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 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