

² 20 C.F.R. § 501.6(d); *see J.P.*, Docket No. 17-0053 (issued May 23, 2017); *R.M.*, Docket No. 14-1213 (issued October 15, 2014). The Board notes that, with regard to the termination of appellant's wage loss compensation and medical benefits, this issue was previously affirmed by the Board on May 9, 2008 and therefore is *res judicata*, that is, not subject to further review. *See M.V.*, Docket No. 24-0092 (issued March 28, 2024); *R.P.*, Docket No. 23-0638 (issued November 30, 2023); *A.D.*, Docket No. 20-0553 (issued April 19, 2021); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

this appeal,³ pursuant to the Federal Employees' Compensation Act⁴ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.⁵

ISSUES

The issue is whether OWCP properly denied appellant's requests for reconsideration on May 2, and July 12, 2018, finding that they were untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

This case has previously been before the Board.⁶ The facts and circumstances of the case as set forth in the Board's prior decisions and prior orders are incorporated herein by reference. The relevant facts are as follows.

On May 7, 1985 appellant, then a 28-year-old letter sorter machine operator, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained ankle, left hip, and left neck injuries when she slipped down a flight of stairs while in the performance of duty. OWCP assigned the present claim OWCP File No. xxxxxx086 and accepted cervical, lumbar, left hip, and left ankle strains. Subsequently, it accepted that appellant sustained a recurrence of disability on July 24, 1985, causally related to her accepted May 7, 1985 employment injury.⁷

On November 7, 1986 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that, on that date, she sustained another recurrence of her May 7, 1985 employment injury. By decision dated February 2, 1987, OWCP denied appellant's recurrence claim. Appellant

³ For final adverse decisions of OWCP issued prior to November 19, 2008, the Board's review authority is limited to appeals which are filed within one year from the date of issuance of OWCP's decision. *See* 20 C.F.R. § 501.3(d)(2). For final adverse decisions issued by OWCP on and after November 19, 2008, the Board's review authority is limited to appeals which are filed within 180 days from the date of issuance of OWCP's decision. *See* 20 C.F.R. § 501.3(e).

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ Together with her appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). By order dated March 11, 2019, the Board exercised its discretion, pursuant to 20 C.F.R. § 501.5(a), and denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 18-1496 (issued March 11, 2019).

⁶ Docket No. 99-958 (issued September 14, 2000), *petition for recon. denied*, Docket No. 99-958 (issued June 5, 2001); Docket No. 03-956 (issued August 4, 2003); Docket No. 04-1741 (issued February 9, 2005); Docket No. 08-571 (issued May 9, 2008); Docket No. 09-42 (issued April 15, 2009); Docket No. 12-544 (issued March 13, 2012), *petition for recon. denied*, Docket No. 12-544 (issued September 14, 2012); *Order Remanding Case*, Docket No. 13-1824 (issued May 16, 2014); Docket No. 15-0550 (issued January 28, 2016); and Docket No. 16-1404 (issued April 14, 2017).

⁷ In a claim filed under OWCP File No. xxxxxx103, OWCP accepted that appellant sustained cervical and thoracic strains, and left trapezius myositis while in the performance of duty on July 24, 1985. It administratively combined OWCP File Nos. xxxxxx103 and xxxxxx086, with OWCP File No. xxxxxx086 serving as the master file.

subsequently requested reconsideration. On April 12, 1988 OWCP denied modification of the February 2, 1987 decision.

Appellant continued to request reconsideration of the denial of her recurrence claim. OWCP, however, denied appellant's requests for reconsideration, finding that they were untimely filed and failed to demonstrate clear evidence of error. By decisions dated August 4, 2003 and February 9, 2005, the Board affirmed OWCP's nonmerit denials of appellant's requests for reconsideration, finding that they were untimely filed and failed to demonstrate clear evidence of error.⁸

By decision dated January 18, 2007, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, based on the medical opinion of Dr. Mukund Komanduri, a Board-certified orthopedic surgeon serving as an impartial medical examiner (IME), who opined that she no longer had disability or residuals causally related to her accepted May 7 and July 24, 1985 employment injuries. That decision was affirmed by an OWCP hearing representative on November 15, 2007.

Appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated November 15, 2007, OWCP's hearing representative affirmed the January 18, 2007 termination decision. Appellant, through counsel, appealed to the Board, and by decision dated May 9, 2008, the Board affirmed the January 18 and November 15, 2007 decisions, finding that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 18, 2007, and that appellant had not met her burden of proof to establish continuing disability and residuals on or after January 18, 2007.⁹

Appellant continued to request reconsideration of OWCP's denial of continuing disability and residuals on or after January 18, 2007 causally related to the accepted employment injury. OWCP denied those requests for reconsideration, finding that they were untimely filed and failed to establish clear evidence of error.

On March 21, 2018, appellant requested reconsideration of the February 2, 1987 recurrence decision. Appellant alleged that she had established her claim for recurrence of disability. She further alleged that OWCP had lost her file and that she was entitled to continuation of pay, or wage loss, due to her recurrence of disability.

On April 24, 2018 appellant requested reconsideration of OWCP's denial of continuing disability and residuals on or after January 18, 2007 causally related to the accepted employment injury. She contended that OWCP abused its authority by terminating all of her compensation benefits on January 18, 2007 without providing proper notice pursuant to 5 U.S.C. § 8106(c) after it received a third medical report dated January 17, 2007 from Dr. Komanduri, the IME, upon whose opinion the termination of wage-loss compensation and medical benefits was based. Appellant asserted that his report was cursory, and he did not respond to questions posed by

⁸ Docket No. 03-956 (issued August 4, 2003); Docket No. 04-1741 (issued February 9, 2005); and *Order Remanding Case*, Docket No. 09-42 (issued April 15, 2009).

⁹ Docket No. 08-571 (issued May 9, 2008).

OWCP. She claimed that this error was criminal and that another IME should be appointed. Appellant submitted correspondence between herself and OWCP regarding the termination of her compensation benefits previously of record. She also submitted medical reports previously of record, including Dr. Komanduri's January 17, 2007 report.

By decision dated May 2, 2018, OWCP denied appellant's requests for reconsideration of the merits of her recurrence claim, finding that they were untimely filed and failed to demonstrate clear evidence of error.

On May 27, and June 1, and 18, 2018 appellant again requested reconsideration regarding OWCP's denial of continuing disability and residuals on or after January 18, 2007 causally related to the accepted employment injury. She alleged that Dr. Komanduri, the IME, was improperly selected and that OWCP improperly terminated her compensation benefits under 5 U.S.C. § 8106(c)(2) as Dr. Komanduri's report was cursory and did not support the termination of her compensation. Appellant further alleged that the employing establishment did not offer her a suitable assignment after November 7, 1986. She continued to resubmit evidence previously of record.

By decision dated July 12, 2018, OWCP denied appellant's requests for reconsideration of the termination of her wage-loss compensation and medical benefits, finding that the requests were 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.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, OWCP must nevertheless undertake a

¹⁰ 5 U.S.C. § 8128(a); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *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 (February 2016).

¹³ *E.R.*, Docket No. 09-599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

limited review to determine whether it demonstrates clear evidence of error.¹⁴ If an application demonstrates clear evidence of error, it will reopen the case for merit review.¹⁵

To demonstrate clear evidence of error, a claimant must submit evidence that is relevant to the issue that, was decided by OWCP,¹⁶ is positive, precise, and explicit, and is manifest on its face that OWCP committed an error.¹⁷ Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹⁸ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁹ 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.²⁰ 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

ANALYSIS

The Board finds that OWCP properly denied appellant's requests for reconsideration on May 2, and July 12, 2018, finding that they were untimely filed and failed to demonstrate clear evidence of error.

The Board finds that OWCP properly determined that appellant's requests for reconsideration received by OWCP March 21, and April 24, 2018 were untimely filed. OWCP's regulations²³ and procedures²⁴ establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case. The most recent merit decision

¹⁴ See 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

¹⁵ *G.G.*, Docket No. 18-1074 (issued January 7, 2019); see also 20 C.F.R. § 10.607(b); *supra* note 12 at Chapter 2.1602.5 (February 2016).

¹⁶ See *A.F.*, Docket No. 18-0645 (issued October 26, 2018); *Dean D. Beets*, 43 ECAB 1153 (1992).

¹⁷ See *A.F.*, *id.*; *Leona N. Travis*, 43 ECAB 227 (1991).

¹⁸ *J.D.*, Docket No. 16-1767 (issued January 12, 2017); *Jimmy L. Day*, 48 ECAB 652 (1997).

¹⁹ *Id.*

²⁰ *Id.*

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 20 C.F.R. § 10.607(a); see *Alberta Dukes*, 56 ECAB 247 (2005).

²⁴ *Supra* note 12 at Chapter 2.1602.4 (February 2016); see *A.F.*, *supra* note 16; *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

denying appellant's notice of recurrence of disability commencing November 7, 1986 was dated April 12, 1988, and the most recent merit decision regarding the termination of appellant's compensation benefits was the Board's May 9, 2008 decision. Appellant had one year from the date of those decisions to timely request reconsideration.²⁵ As her reconsideration requests were received by OWCP more than one year following the last merit decisions, they were untimely filed. Consequently, appellant must show clear evidence of error on the part of OWCP. Regarding the denial of her recurrence claim, appellant alleged that she had established her claim for recurrence of disability. She further alleged that OWCP had lost her file and that she was entitled to continuation of pay, or wage loss due to her recurrence of disability. Her arguments concerning her alleged recurrence of disability commencing November 7, 1986 do not establish error on the part of OWCP and fail to demonstrate clear evidence of error in OWCP's April 12, 1988 decision.²⁶

With regard to continuing disability and residuals on or after January 18, 2007, appellant alleged that OWCP abused its authority by terminating all of her compensation benefits on January 18, 2007 without providing proper notice pursuant to 5 U.S.C. § 8106(c) and that the employing establishment failed to offer her a suitable assignment. She further alleged that Dr. Komanduri, the IME, was improperly selected and that his report was cursory. She also submitted medical reports previously of record, including Dr. Komanduri's January 17, 2007 report.

The Board notes however that OWCP did not terminate appellant's benefits under 5 U.S.C. § 8106(c). Therefore, appellant's arguments in this regard are irrelevant to the underlying issue in this case. Appellant has not shown error in OWCP's July 28, 2018 decision with regard to the selection of Dr. Komanduri as the IME or according him the special weight of the medical evidence.

Appellant also resubmitted evidence that was previously of record. Repetitive or cumulative evidence is insufficient to establish clear evidence of error.²⁷ For the foregoing reasons, the Board finds that the arguments submitted by appellant do not manifest error or raise a substantial question concerning the correctness of OWCP's decision regarding continuing disability and residuals.

As noted, clear evidence of error is intended to represent a difficult standard.²⁸ Accordingly, the Board finds that OWCP properly denied appellant's requests for reconsideration of the merits of the April 12, 1988 and November 15, 2007 decisions, finding that the requests were untimely filed and failed to demonstrate clear evidence of error.

²⁵ See *supra* note 12 at Chapter 2.1602.4a (February 2016).

²⁶ See *B.C.*, Docket No. 25-0214 (issued February 7, 2025); *R.M.*, Docket No. 18-1393 (issued February 12, 2019); *J.R.*, Docket No. 07-1112 (issued November 27, 2007).

²⁷ *M.P.*, Docket No. 17-0367 (issued March 12, 2018); *A.M.*, Docket No. 17-1434 (issued January 2, 2018); *D.B.*, Docket No. 16-0539 (issued May 26, 2016).

²⁸ See *supra* note 22.

CONCLUSION

The Board finds that OWCP properly denied appellant's requests for reconsideration on May 2, and July 12, 2018, finding that they were untimely filed and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the May 2, and July 12, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 26, 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