

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

I.R., Appellant))
)
and)	Docket No. 25-0775
U.S. POSTAL SERVICE, GENERAL MAIL FACILITY, Miami, FL, Employer)	Issued: September 10, 2025
)

Appearances:
Appellant, pro se
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 11, 2025 appellant filed a timely appeal from a July 23, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated February 7, 2023, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the case.²

ISSUE

The issue is whether OWCP properly denied appellant's July 21, 2025 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that OWCP received additional evidence following the July 23, 2025 decision. 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.*

FACTUAL HISTORY

On June 18, 2021 appellant, then a 60-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on June 7, 2021 he injured his arms, hands, and left foot when he tripped on raised flooring and fell while in the performance of duty. He stopped work on June 8, 2021, and returned to work on August 3, 2021. OWCP accepted the claim for contusions of the right hand and elbows. It paid appellant wage-loss compensation on the supplemental rolls from June 8 through August 2, 2021.

On June 16, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By letter dated June 17, 2022, OWCP advised appellant of the evidence necessary to establish an entitlement to a schedule award under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³

On July 28, 2022 OWCP referred appellant, along with the medical record, a SOAF,⁴ and a series of questions to Dr. Clinton G. Bush, III, a Board-certified orthopedic surgeon, for a second opinion examination and impairment rating evaluation.

In a report dated August 15, 2022, Dr. Bush noted the history of the June 7, 2021 employment injury, reviewed the medical record, and documented appellant's subjective complaints and physical examination findings. He opined that he had reached maximum medical improvement (MMI) as of August 15, 2022 and had no ratable impairment in accordance with the sixth edition of the A.M.A., *Guides*.

On August 30, 2022 OWCP routed Dr. Bush's August 15, 2022 report, along with the case record, and SOAF to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for review and determination of appellant's date of MMI and any permanent impairment under the sixth edition of the A.M.A., *Guides*.

In a September 6, 2022 report, Dr. Hammel applied the provisions of the A.M.A., *Guides* to Dr. Bush's physical examination findings. He opined that appellant reached MMI on August 15, 2022, the date of Dr. Bush's evaluation. Dr. Hammel concurred with Dr. Bush's opinion that appellant had no ratable impairment in accordance with the sixth edition of the A.M.A., *Guides*.

By decision dated September 29, 2022, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body.

On November 21, 2022 appellant requested reconsideration of OWCP's September 29, 2022 decision. In support thereof, he submitted medical reports dated October 18, 2022 and January 9 and 10, 2023 by Dr. Mark A. Seldes, a Board-certified orthopedic surgeon, who

³ A.M.A., *Guides* (6th ed 2009).

⁴ The SOAF listed the accepted conditions as contusions to the left ankle and elbows, left ATFL and CFL ligament sprains, and left deltoid ligament tear.

indicated that he concurred with Dr. Bush's assessments but also opined that appellant was developing osteoarthritis in his ankles and feet due to the employment injury.

By decision dated January 20, 2023, OWCP denied modification of its September 29, 2022 decision.

On February 1, 2023 appellant requested reconsideration of OWCP's January 20, 2023 decision.

By decision dated February 7, 2023, OWCP denied modification of the January 20, 2023 decision.

On July 21, 2025 appellant requested reconsideration of the February 7, 2023 decision. No additional evidence or argument was received in support of his schedule award claim.

By decision dated July 23, 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.⁵ 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.⁶ Timeliness is determined by the document receipt date, *i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS).⁷ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁸

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

⁵ *Supra* note 1 at § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁶ 20 C.F.R. § 10.607(a).

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

⁸ *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁹ 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).

¹⁰ *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.¹¹ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.¹² Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹³ 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.¹⁴

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁵ The claimant must present evidence which on its face demonstrates that OWCP made an error (for example, proof that a schedule award was miscalculated). 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.¹⁶ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁷

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 by OWCP on February 7, 2023. As appellant's request for reconsideration was not received by OWCP until July 21, 2025, more than one year after the February 7, 2023 decision, pursuant to 20 C.F.R. § 10.607(a), the request for reconsideration was untimely filed.¹⁸ Consequently, appellant must demonstrate clear evidence of error by OWCP in denying his schedule award claim.¹⁹

¹¹ *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).

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

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

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

¹⁵ *G.G.*, *supra* note 9; *see also* 20 C.F.R. § 10.607(b); *supra* note 8 at Chapter 2.1602.5 (September 2020).

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

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

¹⁸ 20 C.F.R. § 10.607(a). A right to reconsideration within one year accompanies any subsequent merit decision on the issues, including a Board decision. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4a (September 2020); *see also* *B.W.*, Docket No. 25-0475 (issued May 30, 2025); *W.A.*, Docket No. 17-0225 (issued May 16, 2017).

¹⁹ *Id.* at § 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).

On reconsideration, appellant did not submit any medical evidence or argument in support of his schedule award claim. The Board finds that his request for reconsideration did not show on its face that OWCP committed an error in its February 7, 2023 decision. Accordingly, the Board finds that OWCP properly denied appellant's July 21, 2025 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 July 21, 2025 request for reconsideration, as it was untimely filed and failed to demonstrate clear evidence of error.²⁰

ORDER

IT IS HEREBY ORDERED THAT the July 23, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 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

²⁰ The Board notes that the employing establishment provided an authorization for examination and/or treatment (Form CA-16) dated June 10, 2021. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *S.G.*, Docket No. 23-0552 (issued August 28, 2023); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).