

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

M.W., Appellant

and

**DEPARTMENT OF THE NAVY, MILITARY
SEALIFT COMMAND, Norfolk, VA, Employer**

**Docket No. 25-0777
Issued: September 16, 2025**

Appearances:

*Capp P. Taylor, 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 August 12, 2025 appellant, through counsel, filed a timely appeal from a February 21, 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 17, 2023 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act (FECA)² and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the 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 February 21, 2025 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 February 10, 2025 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 December 9, 2022 appellant, then a 43-year-old able seaman, filed an occupational disease claim (Form CA-2) alleging that he developed spinal stenosis due to factors of his federal employment. He noted that he was stooping while assisting with mooring duties and experienced a sharp shooting pain through his lower back when he began to stand up. Appellant noted that he first became aware of his condition and realized its relationship to his federal employment on January 25, 2022. He did not stop work.

In support of his claim, appellant submitted statements which indicated that he first experienced pain in his back in October 2021 when he stood up after he pulled slack out of a bow line. Then, in November 2021, he felt pain in his lower back when he tied up bow line during mooring duties. Appellant also described his work duties after November 2021, which worsened his symptoms.

In a medical form report dated January 25, 2022, Dr. Takashi Omori, a primary care physician in Yokohama City, Japan, diagnosed lumbar disc space narrowing.

An x-ray of the lumbar spine dated March 11, 2022 revealed grade 1 anterolisthesis at L3-4.

In medical reports dated April 7 and May 18, 2022, Dr. Saunora Prom, an osteopathic family physician, noted appellant's complaints of lower back pain radiating down his right posterior thigh, which he attributed to standing up after pulling a ship line six months prior. He diagnosed lumbosacral radiculopathy and recommended work restrictions.

A magnetic resonance imaging scan of the lumbar spine dated May 27, 2022 revealed moderate central canal stenosis with bilateral lateral recess effacement and bilateral moderate-to-severe foraminal narrowing at L3-4 and L4-5.

In medical reports dated June 6 through October 6, 2022, Dr. Frederick Bagares, a Board-certified physiatrist, diagnosed lumbar spinal stenosis and administered epidural injections.

Dr. David C. Waters, a Board-certified neurosurgeon, performed a spinal fusion on November 17, 2022. In a letter dated January 19, 2023, he indicated that appellant's work duties aggravated underlying disc degeneration at L3-4 and L4-5.

By decision dated February 17, 2023, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed medical condition(s) and the accepted employment factors. Consequently, it concluded that he had not met the requirements to establish an injury as defined by FECA.

OWCP continued to receive evidence, including medical reports by Dr. Yasmin Ahmed, a Board-certified osteopathic family physician, dated November 18 and December 16, 2024 and

January 29, 2025. Dr. Ahmed diagnosed collapse of the L4 and L5 discs due to appellant's job duties.

On February 10, 2025 appellant requested reconsideration of OWCP's February 17, 2023 decision.

By decision dated February 21, 2025, OWCP denied appellant's reconsideration request, 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.⁴ 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.⁵ Timeliness is determined by the document receipt date, *i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS).⁶ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁷

When a request for reconsideration is untimely, OWCP undertakes a limited review to determine whether the request demonstrates clear evidence that OWCP's most recent merit decision was in error.⁸ Its procedures provide that it will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the claimant's request for reconsideration demonstrates "clear evidence of error" on the part of OWCP.⁹

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹⁰ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. 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. 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.

⁴ *Supra* note 2 at § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁵ 20 C.F.R. § 10.607(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁷ *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).

⁸ *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).

⁹ *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 6 at Chapter 2.1602.5 (September 2020).

¹⁰ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 6 at Chapter 2.1602.5a (September 2020).

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹¹ 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.¹² The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹³

ANALYSIS

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

A request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.¹⁴ As appellant's request for reconsideration was not received until February 10, 2025, more than one year after the issuance of OWCP's February 17, 2023 merit decision, it was untimely filed. Consequently, he must demonstrate clear evidence of error by OWCP in denying the claim.¹⁵

In support of his untimely request for reconsideration, appellant submitted medical reports by Dr. Ahmed dated November 18, 2024 through January 29, 2025. However, 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 notes that clear evidence of error is intended to represent a difficult standard.¹⁷ The argument and evidence submitted by appellant in support of his untimely request for reconsideration does not raise a substantial question as to the correctness of the denial of his claim.¹⁸ Thus, the evidence is insufficient to demonstrate clear evidence of error.¹⁹

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

¹¹ *G.G.*, *supra* note 7; *see also* 20 C.F.R. § 10.607(b); *id.* at Chapter 2.1602.5 (February 2016).

¹² *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *id.* at Chapter 2.1602.5(a) (February 2016).

¹³ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹⁴ 20 C.F.R. § 10.607(a).

¹⁵ *Id.* at § 10.607(b); *see R.T.*, Docket No. 19-0604 (issued September 13, 2019); *see Debra McDavid*, 57 ECAB 149 (2005).

¹⁶ *Supra* note 12.

¹⁷ *Supra* note 11.

¹⁸ *See P.T.*, Docket No. 18-0494 (issued July 9, 2018).

¹⁹ *J.C.*, Docket No. 20-1250 (issued May 24, 2021); *W.D.*, Docket No. 19-0062 (issued April 15, 2019).

CONCLUSION

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.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 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