

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

C.W., Appellant

and

**U.S. POSTAL SERVICE, OTAY MESA ANNEX
STATION, San Diego, CA, Employer**

Docket No. 25-0815

Issued: September 19, 2025

Appearances:

Kathryn Puanani Akana, 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

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 26, 2025 appellant, through her representative, filed a timely appeal from a March 4, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated December 18, 2020 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this 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 March 4, 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 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On May 30, 2018 appellant, then a 31-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a right hip condition due to factors of her federal employment, including repetitive motion. She did not stop work. OWCP accepted the claim for right hip joint femoral acetabular impingement.

On April 15, 2020 appellant submitted a claim for compensation (Form CA-7) for intermittent disability from work during the period July 21, 2018 through August 16, 2019.

In a development letter dated October 1, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and afforded her 30 days to respond. No additional evidence was received.

By decision dated December 18, 2020, OWCP denied appellant's claim for intermittent disability from work during the period July 21, 2018 through September 10, 2020. The decision was addressed and mailed to appellant at her last known address of record in Chula Vista, California. There is no indication that it was returned as undeliverable.

On July 11, 2024 appellant's representative submitted a written change of address for appellant and herself. Appellant's address was the same address listed on appellant's October 25, 2023 Form CA-2, in Chula Vista, California and the representative's new address was listed in Ontario, California.

On February 13, 2025 appellant, through her representative, requested reconsideration of the December 18, 2020 decision. The representative asserted that appellant had not received a copy of the December 18, 2020 decision. In support of this argument, she provided an e-mail from USPS to appellant dated October 1, 2020 which indicated that it had detected a change of address submission corresponding to her online account, therefore her informed delivery features would be temporarily suspended. Appellant's representative also submitted copies of two illegible envelopes which had been returned as undeliverable.

By decision dated March 4, 2025, OWCP denied appellant's request for reconsideration of the merits of her claim, 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

⁴ 5 U.S.C. § 8128(a); *see C.V.*, Docket No. 23-0782 (issued June 17, 2025); *T.J.*, Docket No. 21-0586 (issued September 30, 2021); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

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 OWCP's 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 In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹⁰

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. 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.¹²

OWCP's procedures note that the clear evidence of error is intended to represent a difficult standard. The claimant must present evidence which on its face demonstrates that OWCP made an error. Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have required further development, is not clear evidence of error.¹³

⁵ 20 C.F.R. § 10.607(a).

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

⁷ *C.V.*, *supra* note 4; *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* 20 C.F.R. § 10.607(b); *supra* note 5 at Chapter 2.1602.5 (September 2020).

¹⁰ *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

¹¹ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 6 at Chapter 2.1602.5(a) (September 2020).

¹² *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

¹³ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 6 at Chapter 2.1602.5a (September 2020).

The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁴

ANALYSIS

The Board finds that OWCP properly determined that appellant's request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

OWCP's regulations¹⁵ and procedures¹⁶ establish a one-year time limit 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.¹⁷ The most recent merit decision regarding the issue on appeal was OWCP's December 18, 2020 decision denying appellant's claim for intermittent wage-loss compensation for the period July 21, 2018 through September 10, 2020. As appellant's February 13, 2025 request for reconsideration was received more than one year after the December 18, 2020 merit decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in its December 18, 2020 merit decision.¹⁸

On reconsideration, appellant's representative contended that clear evidence of error was established as appellant never received the December 18, 2020 decision. The Board has held that, absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received.¹⁹ This is known as the "mailbox rule."²⁰ The presumption is rebutted where there is evidence of nondelivery or other evidence that supports that the addressee did not receive the correspondence.²¹ The record establishes that OWCP's December 18, 2020 decision was properly sent to appellant's address of record and there is no indication that it was returned as undeliverable.

In an e-mail to appellant dated October 1, 2020, USPS indicated that it had detected a change of address submission corresponding to her online account, therefore her informed delivery features would be temporarily suspended. Appellant's representative also submitted copies of two

¹⁴ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹⁵ 20 C.F.R. § 10.607(a); *see L.T.*, Docket No. 21-0844 (issued April 21, 2023); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Alberta Dukes*, 56 ECAB 247 (2005).

¹⁶ *Supra* note 6 at Chapter 2.1602.4 (February 2016); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

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

¹⁸ *Id.* at § 10.607(b); *see T.N.*, Docket No. 22-0560 (issued April 24, 2025); *M.W.*, Docket No. 17-0892 (issued May 21, 2018).

¹⁹ *V.M.*, Docket No. 24-0151 (issued March 25, 2024); *J.B.*, Docket No. 23-0591 (issued August 29, 2023); *W.R.*, Docket No. 22-1016 (issued September 30, 2022); *M.S.*, Docket No. 22-0362 (issued July 29, 2022); *L.L.*, Docket No. 21-1194 (issued March 18, 2022).

²⁰ *V.M.*, *id.*; *N.B.*, Docket No. 23-1157 (issued March 12, 2024); *L.L.*, *id.*; *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

²¹ *V.M.*, *id.*; *L.M.*, Docket No. 24-0023 (issued February 22, 2024); *J.B.*, Docket No. 17-1164 (issued September 11, 2017).

illegible envelopes. This evidence does not establish on its face that OWCP erred in its December 18, 2020 decision.

As noted, clear evidence of error is intended to represent a difficult standard.²² The Board finds that appellant's request for reconsideration did not show on its face that OWCP's December 18, 2020 decision was either improperly issued or that it contained an error. Thus, the evidence is insufficient to demonstrate clear evidence of error.²³

Accordingly, the Board finds that OWCP properly denied appellant's February 13, 2025 request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

CONCLUSION

The Board finds that OWCP properly determined that appellant's request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 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

²² *VM., id.; E.L.*, Docket No. 22-0631 (issued October 31, 2022).

²³ *W.R.*, Docket No. 24-0244 (issued May 22, 2024); *B.C.*, Docket No. 24-0022 (issued April 25, 2024); *J.J.*, Docket No. 23-0155 (issued October 5, 2023).