

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

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F.B., Appellant)	
)	
and)	
)	Docket No. 26-0233
)	Issued: April 29, 2026
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS AND BORDER PROTECTION,)	
El Paso, TX, Employer)	
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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 January 11, 2026 appellant filed a timely appeal from a November 3, 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, 2023, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 25, 2023 appellant, then a 50-year-old customs and border protection officer, filed a traumatic injury claim (Form CA-1) alleging that on May 24, 2023 he sustained a left annular finger injury when his assigned K9 pulled away as he was placing a collar on the dog while in the performance of duty. He did not stop work.

A May 30, 2023 left-hand x-ray related normal findings.

In work capacity evaluations (Form OWCP-5c) dated May 30 and June 26, 2023, Dr. Paul Chubb, an osteopath Board-certified in orthopedic surgery, advised that appellant was capable of performing his usual job.

An August 5, 2023 left middle finger magnetic resonance imaging (MRI) scan read by Dr. Hugo Isuani, a Board-certified radiologist, related an impression of partial tear of the extensor hood and tendon at the level of the proximal inter-phalangeal (PIP) third finger joint, minimal joint effusion, and flexor tenosynovitis.

OWCP received a series of physical therapy reports, which indicated that appellant was treated for pain in the left 4th digit.

In an October 5, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. No additional evidence was received.

In a follow-up letter dated November 7, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the October 5, 2023 letter to submit the necessary evidence. OWCP further advised that if sufficient evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

On November 15, 2023 OWCP referred the case record to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for an opinion on whether he concurred with the medical diagnosis(es) linked to the accepted May 24, 2023 employment incident.

In a report dated November 17, 2023, Dr. Katz reviewed the case record and explained that the physical therapy records indicated a left 4th finger condition, while an MRI scan referenced the 3rd finger.

By decision dated December 18, 2023, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that a medical condition was diagnosed in connection with the accepted May 24, 2023 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 4, 2024 OWCP received reports dated May 30 and October 30, 2023 from Dr. Chubb, who diagnosed left wrist and hand sprain.

On September 9, 2025 appellant requested reconsideration. In an accompanying letter, appellant alleged that his MRI scan indicated that his finger injury was at the level of the middle finger notch and that OWCP had misread his MRI scan.

By decision dated November 3, 2025, OWCP 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.

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.² 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.³ Timeliness is determined by the document receipt date *i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS).⁴ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁵

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.⁶ 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.⁷ In this regard, OWCP will limit its focus to 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.⁸

² *Id.* at. § 8128(a); *G.E.*, Docket No. 25-0189 (issued March 5, 2025); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

³ 20 C.F.R. § 10.607(a).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

⁵ *B.B.*, Docket No. 26-0117 (issued March 26, 2026); *M.D.*, Docket No. 25-0435 (issued May 23, 2025); *G.E.*, *supra* note 2; *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).

⁶ *See* 20 C.F.R. § 10.607(b); *B.B.*, *id.*; *T.C.*, Docket No. 19-1709 (issued June 5, 2020); *Charles J. Prudencio*, 41 ECAB 499 (1990).

⁷ *M.D.*, *supra* note 5; *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 4 at Chapter 2.1602.5 (September 2020).

⁸ *K.S.*, Docket No. 25-0142 (issued January 27, 2025); *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).

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.⁹ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.¹⁰ 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.¹¹ OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹² 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.¹³ 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 establish 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 was OWCP's December 18, 2023 decision. As appellant's September 9, 2025 request for reconsideration was received more than one year after the December 18, 2023 merit decision, the Board finds that it was untimely filed. Consequently,

⁹ *J.M.*, Docket No. 22-0630 (issued February 10, 2023); *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 4 at Chapter 2.1602.5a (September 2020).

¹⁰ 20 C.F.R. § 10.607(b); *B.W.*, Docket No. 19-0626 (issued March 4, 2020); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

¹¹ *See G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

¹² *See G.G.*, *supra* note 5; *see also* 20 C.F.R. § 10.607(b); *supra* note 4 at Chapter 2.1602.5 (September 2020).

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

¹⁴ *G.B.*, *supra* note 11; *D.S.*, Docket No. 17-0407 (issued May 24, 2017); *George C. Vernon*, 54 ECAB 319 (2003).

¹⁵ 20 C.F.R. § 10.607(a); *see C.B.*, Docket No. 25-0297 (issued March 26, 2025); *F.N.*, Docket No. 18-1543 (issued March 6, 2019); *Alberta Dukes*, 56 ECAB 247 (2005).

¹⁶ *Supra* note 4 at Chapter 2.1602.4 (February 2016); *see J.H.*, Docket No. 25-0267 (issued March 7, 2025); *L.A.*, Docket No. 19-0471 (issued October 29, 2019); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

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

appellant must demonstrate clear evidence of error by OWCP in its December 18, 2023 merit decision.¹⁸

On reconsideration, appellant argued that OWCP had misread his August 5, 2023 MRI scan, which was previously of record. The underlying issue, however, is whether the evidence of record contained a medical diagnosis in connection with the accepted employment incident prior to the December 18, 2023 merit decision. Appellant's August 5, 2023 MRI scan only provided an impression of a partial third finger joint tear of the PIP. The MRI scan did not provide a diagnosis of a medical condition in connection with the accepted employment incident. Also on reconsideration, appellant submitted reports dated May 30 and October 30, 2023, wherein Dr. Chubb diagnosed left wrist and hand sprain. It also received a Form OWCP-5c dated October 30, 2023 wherein Dr. Chubb found appellant capable of performing his usual job. However, as noted above, clear evidence of error is intended to represent a difficult standard.¹⁹ Even a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical evidence requiring further development is insufficient to demonstrate clear evidence of error.²⁰ It is not enough to show that evidence could be construed so as to produce a contrary conclusion.²¹ The evidence and argument submitted by appellant in support of his untimely request for reconsideration, therefore, do not raise a substantial question as to the correctness of the denial of his claim.²² Thus, the Board finds that appellant's untimely request for reconsideration 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.

¹⁸ *S.B.*, Docket No. 25-0176 (issued March 12, 2025); *R.G.*, Docket No. 25-0043 (issued December 19, 2024); *S.M.*, Docket No. 18-1499 (issued February 5, 2020) (OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation, if the claimant's request for reconsideration shows clear evidence of error on the part of OWCP).

¹⁹ *Supra* note 13. *See also J.J.*, Docket No. 26-0096 (issued March 11, 2026); *J.N.*, Docket No. 22-0899 (issued December 19, 2022); *J.M.*, Docket No. 19-1842 (issued April 23, 2020).

²⁰ *See J.J., id.; E.R.*, Docket No. 24-0681 (issued July 29, 2024); *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

²¹ *Supra* note 11.

²² *Id.* *See also I.D.*, Docket No. 25-0807 (issued November 20, 2025); *P.T.*, Docket No. 18-0494 (issued July 9, 2018).

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 29, 2026
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