

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

M.D., Appellant)	
)	
and)	Docket No. 26-0245
)	Issued: April 20, 2026
DEPARTMENT OF THE ARMY, LEXINGTON)	
BLUEGRASS ARMY DEPOT, Richmond, KY,)	
Employer)	
)	

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 13, 2026 appellant filed a timely appeal from a September 25, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The most recent merit decision is a Board decision dated June 27, 2024, which became final after 30 days of issuance and is not subject to further review.¹ As there is no merit decision by OWCP issued within 180 days of 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 20 C.F.R. § 501.6(d). *See also J.H.*, Docket No. 23-0055 (issued January 30, 2024); *J.T.*, Docket No. 21-0844 (issued April 21, 2023); *M.D.*, Docket No. 22-0542 (issued August 17, 2022).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional evidence to OWCP and on appeal to the Board. 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

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On February 9, 1994 appellant, then a 42-year-old boiler operator, filed an occupational disease claim (Form CA-2) alleging that he sustained carpal tunnel syndrome causally related to factors of his federal employment. OWCP accepted the claim for bilateral carpal tunnel syndrome. It paid appellant wage-loss compensation for disability from work on the supplemental rolls, effective August 31, 1995, and on the periodic rolls, effective March 31, 1996.

By decisions dated September 12, 2001 and May 7, 2002, OWCP reduced appellant's compensation benefits based on its finding that he had the capacity to work as a telecommunicator.

Appellant appealed to the Board. By decision dated January 29, 2003,⁵ the Board reversed OWCP's loss of wage-earning capacity determination after finding that there was a conflict in the medical opinion evidence regarding his work capacity.

By decision dated June 4, 2013, OWCP terminated appellant's compensation and entitlement to a schedule award effective that date as he refused an offer of suitable employment under 5 U.S.C. § 8106(c)(2). By decision dated November 26, 2013, an OWCP hearing representative affirmed the June 4, 2013 decision. By decision dated April 23, 2014, OWCP denied appellant's request for a review of the written record as he had previously requested and received a telephonic hearing. By decisions dated January 14 and February 9, 2015, it denied his reconsideration requests as untimely and insufficient to demonstrate clear evidence of error.

Appellant appealed to the Board. By decision dated August 20, 2015,⁶ the Board set aside OWCP's January 14 and February 9, 2015 decisions. The Board found that appellant had timely requested reconsideration of the November 26, 2013 decision and remanded the case for OWCP to apply the standard applicable for timely reconsideration requests.

⁴ Docket No. 02-1754 (issued January 29, 2003); Docket No. 15-0811 (issued August 20, 2015); Docket No. 16-0102 (issued March 11, 2016); Docket No. 19-1500 (issued February 24, 2020); Docket No. 23-0377 (issued June 5, 2023); Docket No. 24-0239 (issued June 27, 2024), *denying petition for recon.*, Docket No. 24-0239 (issued March 27, 2025).

⁵ Docket No. 02-1754 (issued January 29, 2003).

⁶ Docket No. 15-0811 (issued August 20, 2015).

By decision dated September 30, 2015, OWCP denied modification of its November 26, 2013 decision terminating appellant's compensation for refusing suitable work under 5 U.S.C. § 8106(c)(2).

Appellant again appealed to the Board. By decision dated March 11, 2016,⁷ the Board reversed the September 30, 2015 OWCP decision. The Board found that the medical evidence was insufficient to establish that appellant could work for 10 hours per day for 4 days a week and that, consequently, OWCP had failed to discharge its burden of proof to support termination of his wage-loss compensation under 5 U.S.C. § 8106(c)(2).

Following the Board's decision, OWCP reinstated appellant's wage-loss compensation. On July 30, 2021 OWCP referred appellant, along with the medical record and a series of questions, to Dr. Anbu K. Nadar, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding appellant's disability status.

In a September 7, 2021 report, Dr. Nadar noted his August 20, 2021 examination findings and opined that appellant had continued residuals of his bilateral carpal tunnel syndrome based on his clinical examination. In a work capacity evaluation (Form OWCP-5c) dated August 20, 2021, he opined that appellant could work 8 hours per day with restrictions on performing repetitive movements of the wrists and elbows for no more than 2 hours and 40 minutes per day, and pushing, pulling, and lifting up to 10 pounds for no more than 2 hours and 40 minutes per day.

OWCP requested that the employing establishment provide appellant a job offer within the restrictions set forth by Dr. Nadar; however, it did not have a suitable position available.

On March 10, 2022 OWCP referred appellant to a vocational rehabilitation counselor for vocational rehabilitation. In an April 11, 2022 report, the vocational rehabilitation counselor advised that she had contacted appellant on March 24, 2022 for a vocational interview. She noted that he had worked as a boilermaker and had graduated high school, but did not possess significant computer skills.

On June 15, 2022 OWCP transferred appellant to a different vocational rehabilitation counselor. On June 23, 2022 it requested updated medical evidence from appellant's attending physician addressing his current condition and work limitations.

On July 8, 2022 appellant requested a copy of his case file. He further noted that a new vocational rehabilitation counselor had contacted him for a meeting. In a vocational rehabilitation report dated July 26, 2022, the vocational rehabilitation counselor discussed appellant's employment and educational background. She indicated that she had scheduled vocational testing.

In an August 25, 2022 rehabilitation action report (Form OWCP-44), the vocational rehabilitation counselor indicated that appellant had appeared for the scheduled vocational testing on August 25, 2022, but refused to take the tests. On September 9, 2022 OWCP notified appellant that he had refused to participate in rehabilitation efforts based on his failure to keep an appointment for vocational testing on August 25, 2022. It afforded him 30 days to make a good faith effort to participate with vocational rehabilitation or to submit additional evidence or

⁷ Docket No. 16-0102 (issued March 11, 2016).

argument substantiating that he was unable to participate. OWCP informed appellant that if he refused to cooperate without good cause his compensation would be reduced to zero. In a September 21, 2022 vocational rehabilitation assessment, the vocational rehabilitation counselor set forth appellant's transferrable skills and again noted that he had refused to participate in vocational testing. In a vocational rehabilitation report dated September 22, 2022, the rehabilitation counselor noted that she had received an e-mail from the vocational tester advising that appellant appeared for the test, but refused to take it. She attached a copy of the test with his signature and notes across the pages of the test. On October 11, 2022 OWCP's vocational rehabilitation specialist related that appellant had refused to participate in vocational testing scheduled for September 21, 2022.

By decision dated October 26, 2022, OWCP reduced appellant's compensation to zero for failure to participate in vocational rehabilitation. It found that he had failed to participate in the essential preparatory effort of vocational rehabilitation when he failed to cooperate with vocational testing. OWCP thus found that it was unable to determine what appellant's wage-earning capacity would have been had he undergone testing and vocational rehabilitation. It consequently reduced his compensation to zero under 20 C.F.R. § 10.519.

Appellant appealed to the Board. By decision dated June 5, 2023,⁸ the Board affirmed OWCP's October 26, 2022 decision.

In a July 7, 2023 statement, appellant requested that OWCP accept the finding by Dr. Luis Pagani, a Board-certified neurosurgeon, in his November 13, 2018 report that he was disabled and the May 18, 2004 disability determination by the Social Security Administration (SSA). He also submitted a February 1, 2005 finding from the Department of Veterans Affairs (DVA) that he had a service-connected disability, and a favorable SSA decision dated May 18, 2004.

On July 18, 2023 appellant requested reconsideration. He advised that he disagreed with the August 20, 2021 report from Dr. Nadar, the second opinion physician. Appellant asserted that his attending physicians, the DVA, and SSA had found that he was totally disabled from work. He submitted evidence regarding 2022 vocational rehabilitation efforts.

On August 24, 2023 appellant asserted that OWCP failed to allow him to submit supporting medical evidence to Dr. Nadar. He advised that he did not understand OWCP's September 9, 2022 "warning letter" or why his continued pain was not an acceptable reason for failing to cooperate. Appellant asserted that the vocational rehabilitation counselor told him his answers were incorrect on vocational testing and made racist comments. He noted that he had signed the vocational test and he questioned whether there was proof that he had missed an appointment with the vocational rehabilitation counselor on September 21, 2022.

On October 19, 2023 appellant asserted that he had submitted an initial reconsideration request on August 22, 2023 and questioned why OWCP had denied adjudicating his request for reconsideration.

By decision dated December 18, 2023, OWCP denied modification.

⁸ Docket No. 23-0377 (issued June 5, 2023).

Appellant subsequently submitted to OWCP copies of August 26 and October 11, 2022 memoranda, wherein his vocational rehabilitation counselor indicated that he had not complied with vocational rehabilitation services. He also submitted copies of other vocational rehabilitation documents, dated from mid- to-late-2022, concerning attempts to test his vocational ability; a May 18, 2004 SSA decision; a February 1, 2005 DVA decision; prior OWCP decisions/informational letters regarding vocational services/suitable work; prior reconsideration requests to OWCP; a November 13, 2018 Form OWCP-5c by Dr. Pagani; and August 20 and September 7, 2021 reports by Dr. Nadar. These documents were previously of record.

Appellant appealed to the Board. By decision dated June 27, 2024,⁹ the Board affirmed OWCP's December 18, 2023 merit decision.

In a July 8, 2024 statement, appellant asserted that OWCP claims examiners made racially discriminatory comments to him.

In an August 23, 2024 statement, appellant asserted that his vocational rehabilitation counselor made racially discriminatory comments to him on an "August 22, 2022 testing date."

On September 5, 2025 appellant requested reconsideration and asserted that OWCP claims examiners and his vocational rehabilitation counselor made racially discriminatory comments to him. He further asserted that these claimed actions gave him good cause to not participate in vocational testing. Appellant also submitted copies of OWCP informational letters and reconsideration requests previously of record.

By decision dated September 25, 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.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

⁹ Docket No. 24-0239 (issued June 27, 2024), *denying petition for recon.*, Docket No. 24-0239 (issued March 27, 2025).

¹⁰ 5 U.S.C. § 8128(a); *see also A.B.*, Docket No. 19-1539 (issued January 27, 2020); *W.C.*, 59 ECAB 372 (2008).

¹¹ 20 C.F.R. § 10.607(a).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

¹³ *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).

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.¹⁴ If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review.¹⁵

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹⁶ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.¹⁷ Evidence that 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; 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.¹⁹

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.²⁰ The claimant must present evidence which on its face shows that OWCP made an error.²¹ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.²²

ANALYSIS

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

¹⁴ 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).

¹⁵ *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).

¹⁶ *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).

¹⁷ *J.D.*, Docket No. 19-1836 (issued April 6, 2020); *Leone N. Travis*, 43 ECAB 227 (1999).

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

¹⁹ *T.N.*, Docket No. 18-1613 (issued April 29, 2020).

²⁰ See *supra* note 12 at Chapter 2.1602.5a (September 2020); see also *J.S.*, Docket No. 16-1240 (issued December 1, 2016).

²¹ *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

²² *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

As noted above, a request for reconsideration must be received within one year of the date of the last merit decision for which review is sought.²³ As appellant's request for reconsideration was not received by OWCP until September 5, 2025, more than one year after issuance of the June 27, 2024 Board merit decision, it was untimely filed. Consequently, he must demonstrate clear evidence of error by OWCP in the December 18, 2023 decision.

On reconsideration, appellant asserted that OWCP claims examiners and his vocational rehabilitation counselor made racially discriminatory comments to him. He further asserted that these claimed actions gave him good cause to not participate in vocational testing. The Board finds, however, that appellant's assertions do not raise a substantial question as to the correctness of the June 27, 2024 merit decision.²⁴ Appellant also submitted a number of documents, including copies of August 26 and October 11, 2022 memoranda, wherein his vocational rehabilitation counselor indicated that he had not complied with vocational rehabilitation services; vocational rehabilitation documents, dated from mid- to late-2022, concerning attempts to test his vocational ability; a May 18, 2004 SSA decision; a February 1, 2005 DVA decision; prior OWCP decisions/informational letters regarding vocational services/suitable work; prior reconsideration requests to OWCP; a November 13, 2018 Form OWCP-5c of Dr. Pagani; August 20 and September 7, 2021 reports of Dr. Nadar; requests for copies of the case record, questions regarding the awarding of a schedule award, and documents concerning congressional inquiries. However, the Board finds that this evidence fails to demonstrate clear evidence of error by OWCP in its December 18, 2023 decision.

As noted, clear evidence of error is intended to represent a difficult standard.²⁵ It is not enough to show that evidence could be construed so as to produce a contrary conclusion.²⁶ The Board has reviewed appellant's arguments in the context of these standards and finds that they do not demonstrate clear evidence of error by OWCP in its December 18, 2023 decision. Therefore, OWCP properly denied appellant's 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 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

²³ See *supra* note 10. See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4a (September 2020) (a right to reconsideration within one year accompanies any subsequent merit decision, including any merit decision by the Board).

²⁴ See *supra* note 17.

²⁵ See *supra* note 20.

²⁶ See *supra* note 19.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 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