

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 March 19, 2015 appellant, then a 36-year-old city carrier assistant 1, filed a traumatic injury claim (Form CA-1) alleging that on March 12, 2015 he injured his lower back while in the performance of duty. He recounted that he stepped off a curb while carrying a satchel and felt a twinge in his back. Appellant stopped work on the date of injury. OWCP accepted the claim for lumbar sprain and radiculopathy. It paid appellant wage-loss compensation on the supplemental rolls effective April 27, 2015, and on the periodic rolls effective January 10, 2016.⁴

Appellant received medical treatment for his accepted conditions by Dr. Daniel Feleke, Board-certified in family medicine, including physical therapy and injections, and underwent x-rays on March 13, 2015, and a magnetic resonance imaging (MRI) scan on May 6, 2016, which demonstrated a minimal disc bulge at L4-5.

On August 24, 2016 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. Christopher Geary, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the nature and extent of appellant's accepted conditions and related disability.

In a report dated September 12, 2016, Dr. Geary reviewed the SOAF and medical record and documented physical examination findings. He opined that appellant was capable of returning to his date-of-injury position as a letter carrier, without restrictions.

By decision dated March 29, 2017, OWCP terminated appellant's wage-loss compensation benefits, effective April 2, 2017, finding that Dr. Geary's opinion constituted the weight of the medical opinion evidence that appellant no longer had disability causally related to the accepted March 12, 2015 employment injury.

On April 4, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review and submitted additional medical evidence. A hearing was held on July 11, 2017.

By decision dated September 21, 2017, OWCP's hearing representative affirmed the March 29, 2017 decision.

OWCP continued to receive evidence, including a November 7, 2017 permanent impairment evaluation report by Dr. Frank A. Graf, a Board-certified orthopedic surgeon, who applied the sixth edition of the American Medical Association, *Guides to the Evaluation of*

⁴ OWCP assigned the present claim OWCP File No. xxxxxx478. On July 9, 2024 appellant filed an occupational disease claim (Form CA-2). OWCP accepted the occupational disease claim for aggravations of lumbar degenerative disease and spondylosis without radiculopathy under OWCP File No. xxxxxx751. Under OWCP File No. xxxxxx751, it paid appellant wage-loss compensation on the supplemental rolls effective June 1, 2024, and on the periodic rolls effective January 25, 2026. OWCP has administratively combined OWCP File Nos. xxxxxx751 and xxxxxx478, with the latter serving as the master file.

*Permanent Impairment*⁵ and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) to his physical examination findings and concluded that appellant had 12 percent permanent impairment of the left lower extremity due to neurologic deficits.

Appellant again requested reconsideration on December 29, 2017 and May 22 and October 30, 2018 and submitted additional medical evidence. By decisions dated March 28 and June 6, 2018 and January 7, 2019, respectively, OWCP denied modification of its prior decisions.

OWCP subsequently received an August 21, 2019 report, wherein Dr. Graf reviewed the September 12, 2016 second opinion report by Dr. Geary. Dr. Graf disagreed with Dr. Geary's opinions and explained that he had observed objective anatomical and physiological changes consistent with L5 and S1 spinal nerve root inflammation, causally related to the accepted March 12, 2015 employment injury.

On January 3, 2020 appellant, through his then-counsel, requested reconsideration of OWCP's January 7, 2019 decision. Counsel asserted that OWCP improperly terminated appellant's wage-loss compensation benefits effective April 2, 2017 as there was an unresolved conflict between the opinions of appellant's attending physician, Dr. Graf, and OWCP's second opinion physician, Dr. Geary, as to whether appellant continued to have disability causally related to the March 12, 2015 employment injury. Counsel also asserted that the opinion of Dr. Geary was insufficiently rationalized to meet OWCP's burden of proof.

By decision dated December 10, 2021, OWCP denied modification.

OWCP subsequently received medical reports by Dr. Graf dated September 11, 2024 and December 2, 2025, who diagnosed lumbar disc protrusions and chronic lumbosacral pain with radiculopathy. He opined that the diagnosed conditions were caused by the March 12, 2015 employment injury and worsened by appellant's repetitive work activities.

On February 26, 2026 appellant, through counsel, requested reconsideration of OWCP's December 10, 2021 decision. Counsel submitted a September 3, 2025 narrative medical report by Dr. Graf, who opined that he was unable to perform his date-of-injury position for the period April 1, 2017 through February 2020, causally related to the March 12, 2015 employment injury, but was capable of working with restrictions with respect to walking, lifting, twisting, bending, and squatting. Counsel also asserted that OWCP improperly terminated appellant's wage-loss compensation benefits, effective April 2, 2017, as there was an unresolved conflict in the medical opinion evidence between Dr. Graf and Dr. Geary or, in the alternative, that the September 12, 2016 opinion of Dr. Geary was insufficiently rationalized to meet OWCP's burden of proof.

By decision dated March 19, 2026, 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.

⁵ A.M.A., *Guides* (6th ed 2009).

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.⁶ 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.⁷ Timeliness is determined by the document receipt date, *i.e.*, the "received date" in OWCP's iFECS.⁸ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁹

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.¹⁰ 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.¹¹ 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.¹²

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹³ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.¹⁴ 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.¹⁵ OWCP's procedures note that the term clear evidence of

⁶ *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).

⁷ 20 C.F.R. § 10.607(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁹ *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).

¹⁰ *See* 20 C.F.R. § 10.607(b); *B.B.*, Docket No. 26-0117 (issued March 26, 2026); *T.C.*, Docket No. 19-1709 (issued June 5, 2020); *Charles J. Prudencio*, 41 ECAB 499 (1990).

¹¹ *M.D.*, Docket No. 25-0435 (issued May 23, 2025); *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 8 at Chapter 2.1602.5 (September 2020).

¹² *F.B.*, Docket No. 26-0233 (issued April 29, 2026); *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).

¹³ *J.M.*, Docket No. 22-0630 (issued February 10, 2023); *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 8 at Chapter 2.1602.5a (September 2020).

¹⁴ 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).

¹⁵ *See G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

error is intended to represent a difficult standard.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 of the merits of his claim as it was untimely filed and failed to establish clear evidence of error.

OWCP's regulations¹⁸ and procedures¹⁹ 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.²⁰ The most recent merit decision was OWCP's December 10, 2021 decision. As appellant's February 26, 2026 request for reconsideration was received more than one year after the December 10, 2021 merit decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in its December 10, 2021 merit decision.²¹

In order to establish clear evidence of error, a claimant must submit evidence that is positive, precise, and explicit and must manifest on its face that the Office committed an error. Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.²²

With his request for reconsideration, appellant submitted a September 3, 2025 medical report by Dr. Graf, who opined that appellant was disabled from his date-of-injury position for the period April 1, 2017 through February 2020, causally related to the March 12, 2025 employment injury but was capable of working with restrictions. As noted, clear evidence of error is intended to represent a difficult standard.²³ 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. It is not

¹⁶ *G.G.*, Docket No. 18-1074 (issued January 7, 2019); *see also* 20 C.F.R. § 10.607(b); *supra* note 8 at Chapter 2.1602.5 (September 2020).

¹⁷ *G.B.*, *supra* note 15; *D.S.*, Docket No. 17-0407 (issued May 24, 2017); *George C. Vernon*, 54 ECAB 319 (2003).

¹⁸ 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).

¹⁹ *Supra* note 8 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).

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

²¹ *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).

²² *C.W.*, Docket No. 25-0584 (issued May 26, 2026); *L.L.*, Docket No. 06-1509 (issued December 28, 2006).

²³ *V.B.*, Docket No. 23-0581 (issued January 20, 2026); *J.N.*, Docket No. 22-0899 (issued December 19, 2022); *see also* 20 C.F.R. § 10.607(b); *supra* note 8 at Chapter 2.1602.5a (September 2020).

enough to show that evidence could be construed so as to produce a contrary conclusion. Therefore, this evidence does not raise a substantial question concerning the correctness of OWCP's merit decision.²⁴

The Board has also reviewed appellant's arguments submitted with his untimely request for reconsideration and finds that they are duplicative of previous arguments raised and previously reviewed.²⁵

Accordingly, the Board finds that OWCP properly denied appellant's February 26, 2026 request for reconsideration, finding that 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.

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2026 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2026
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁴ See *V.B., id.; J.N., id.; S.F.*, Docket No. 09-0270 (issued August 26, 2009).

²⁵ See *L.S.*, Docket No. 26-0270 (issued July 6, 2026).