

² The Board notes that appellant submitted additional arguments on appeal to the Board. However, the Board's *Rules of Procedures* 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.³ The facts and circumstances as set forth in the prior Board decisions are incorporated herein by reference. The relevant facts are as follows.

On September 6, 2000 appellant, then a 53-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that he injured his left ribs, right arm, and back when he was struck by a mail container while in the performance of duty. OWCP accepted the claim for left rib contusion/left chest wall contusion and a right shoulder sprain. It paid appellant wage-loss compensation on the supplemental rolls for the period October 24, 2002 to February 24, 2003.⁴

On January 21, 2021 appellant filed a notice of recurrence (Form CA-2a) of the need for medical treatment only. He reported that the recurrence occurred on January 1, 2020, and he first received medical treatment following the recurrence on December 10, 2020. Appellant indicated that he was limited in performing his usual duties following the original injury of September 6, 2000. He noted that when he retired on October 31, 2003, he had limited range of motion in his right shoulder and left shoulder pain, and that he took anti-inflammatory drugs. Appellant indicated that on January 1, 2020 he had increased pain and decreased range of motion in both shoulders.

In a development letter dated February 1, 2021, OWCP informed appellant of the deficiencies of his recurrence claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated March 4, 2021, OWCP denied appellant's recurrence claim, finding that he had not established that he required additional medical treatment due to a worsening of his accepted work-related conditions without an intervening cause.

On April 7, 2021 appellant requested reconsideration. He provided a February 9, 2021 response to OWCP's development questionnaire and a March 4, 2021 statement, in which he indicated that he was diagnosed with adhesive capsulitis in both shoulders.

³ Docket No. 05-892 (issued September 19, 2005); Docket No. 07-1769 (issued April 28, 2008), *petition for recon. denied*, Docket No. 07-1769 (issued November 21, 2008); Docket No. 22-1279 (issued January 10, 2023), *petition for recon. denied*, Docket No. 22-1279 (issued September 15, 2023); Docket No. 24-0681 (issued July 29, 2024); Docket No. 24-0910 (issued November 26, 2024).

⁴ By decision dated February 24, 2003, OWCP terminated appellant's wage-loss compensation, effective that date, pursuant to 5 U.S.C. § 106(c)(2) based on his refusal of suitable work. Appellant retired from the employing establishment on October 31, 2003.

OWCP also received an August 28, 2003 report from Dr. Richard D. Heater, a Board-certified orthopedic surgeon, who provided an impression of bilateral adhesive capsulitis. In an undated attending physician's report (Form CA-20), Dr. Satish K. Sharma, an anesthesiologist, opined, with an affirmative checkmark, that appellant's bilateral adhesive capsulitis was caused or aggravated by an employment activity.

By decision dated July 1, 2021, OWCP denied modification of its March 4, 2021 decision.

On July 19, 2021 appellant requested reconsideration. He requested that his claim be amended to include a recurrence of medical treatment for "consequential and intervening injury for adhesive capsulitis." Appellant also addressed the medical treatment he received in 2002 through 2019 for adhesive capsulitis.

By decision dated July 21, 2021, OWCP denied modification of its July 1, 2021 decision, as he had not established a recurrence of the need for medical treatment. If further found that he had not established a consequential injury/condition which stemmed from his accepted September 6, 2000 work-related injury.

On February 28, 2022 appellant requested reconsideration. He reargued that his claim was for a "consequential injury and intervening injury for adhesive capsulitis." Evidence previously of record was resubmitted.

By decision dated May 26, 2022, OWCP denied appellant's request for reconsideration of the merits of appellant's claim, pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By decision dated January 10, 2023, the Board affirmed OWCP's May 26, 2022 nonmerit decision.⁵

On January 30, 2024 appellant requested reconsideration of OWCP's July 21, 2021 merit decision. He reargued that his intent to amend his claim for recurrence was to have "consequential injury and intervening injuries" considered for adhesive capsulitis, not a recurrent disability. Appellant submitted a duplicate copy of the August 28, 2003 report wherein Dr. Heater diagnosed bilateral adhesive capsulitis and suggested treatment for appellant's shoulders.

By decision dated May 21, 2024, OWCP denied appellant's request for reconsideration of OWCP's July 21, 2021 decision, finding that it was untimely filed and failed to demonstrate clear evidence of error.

Appellant appealed to the Board. By decision dated July 29, 2024, the Board affirmed OWCP's May 21, 2024 nonmerit decision.⁶

⁵ Docket No. 22-1279 (issued January 10, 2023), *petition for recon. denied*, Docket No. 22-1279 (issued September 15, 2023). The Board's decisions and orders are "final upon the expiration of 30 days from the date of their issuance." 20 C.F.R. § 501.6(d).

⁶ Docket No. 24-0681 (issued July 29, 2024). The Board's decisions and orders are "final upon the expiration of 30 days from the date of their issuance." *Id.* at § 501.6(d).

On August 12, 2024 appellant requested reconsideration. He alleged that OWCP used “fictitious” medical documents and documents from non-medical personnel when processing his recurrence claim and discussed a “fictitious” medical document dated January 15, 2003 which released him from medical care. Appellant questioned why he continued to receive medical benefits for the period October 24, 2002 through February 24, 2003 if his claim was closed on January 15, 2003. He also noted that he was allowed medical treatment past January 15, 2003.

By decision dated August 21, 2024, OWCP denied appellant’s request for reconsideration, pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By decision dated November 26, 2024, the Board set aside OWCP’s August 21, 2024 decision and remanded the case for proper review under the clear evidence of error standard.⁷

On remand, by decision dated January 6, 2025, OWCP denied appellant’s request for reconsideration, 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.⁸ OCP’s regulations⁹ establish a one-year time limitation for requesting reconsideration which begins on the date of the original OWCP merit decision. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.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. Timeliness is determined by the document receipt date (*i.e.*, the “received date” in OWCP’s Integrated Federal Employees’ Compensation System (iFECS)).¹¹ Imposition of this one-year filing limitation does not constitute an abuse of discretion.¹²

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

⁷ Docket No. 24-0910 (issued November 26, 2024). The Board’s decisions and orders are “final upon the expiration of 30 days from the date of their issuance.” *Id.* at § 501.6(d).

⁸ 5 U.S.C. § 8128(a); *B.J.*, Docket No. 24-0430 (issued June 5, 2024); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁹ 20 C.F.R. § 10.607(a).

¹⁰ *B.J.*, *supra* note 8; *E.R.*, Docket No. 21-0423 (issued June 20, 2023); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert F. Stone*, 57 ECAB 292 (2005).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

¹² *B.J.*, *supra* note 8; *S.S.*, Docket No. 23-0086 (issued May 26, 2023); *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).

decision was in error.¹³ 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.¹⁴ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.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. Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹⁷

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁸ The claimant must present evidence which on its face shows that OWCP made an error.¹⁹ 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.²⁰ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.²¹

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.

On prior appeal, the Board determined that appellant's August 12, 2024 request for reconsideration was made more than one year after the July 21, 2021 decision. Therefore, pursuant to 20 C.F.R. § 10.607(a), the request for reconsideration was untimely filed. Findings made in

¹³ See 20 C.F.R. § 10.607(b); *B.J.*, *supra* note 8; *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

¹⁴ *B.J.*, *supra* note 8; *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 11 at Chapter 2.1602.5 (September 2020).

¹⁵ *S.D.*, Docket No. 23-0626 (issued August 24, 2023); *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁶ *B.J.*, *supra* note 8; *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 11 at Chapter 2.1602.5a (September 2020).

¹⁷ *B.J.*, *supra* note 8; *L.J.*, Docket No. 23-0282 (issued May 26, 2023); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁸ See *B.J.*, *supra* note 8; see also 20 C.F.R. § 10.607(b); *supra* note 11 at Chapter 2.1602.5 (September 2020).

¹⁹ *J.D.*, Docket No. 25-0163 (issued May 22, 2025); *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

²⁰ *J.D.*, *id.*; *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 7 at Chapter 2.1602.5a (September 2020).

²¹ *J.D.*, *supra* note 19; *G.B.*, Docket No. 19-1762 (issued March 10, 2020); *D.S.*, Docket No. 17-0407 (issued May 24, 2017); *George C. Vernon*, 54 ECAB 319 (2003).

prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.²² Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in denying the claim.

On reconsideration, appellant alleged that OWCP used fictitious medical documents and documents from non-medical personnel when processing his recurrence claim and discussed a “fictitious” medical document dated January 15, 2003 which released him from medical care. He questioned why he continued to receive medical benefits for the period October 24, 2002 through February 24, 2003 if his claim was closed on January 15, 2003. Appellant also noted that he was allowed medical treatment past January 15, 2003. These arguments, however, are irrelevant to the underlying issues of recurrence due to a material change/worsening of his accepted conditions without intervening cause and expansion to include consequential injury/condition. As noted above, the term clear evidence of error is intended to represent a difficult standard.²³ The argument 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 recurrence claim for additional medical treatment.²⁴ Accordingly, 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. Thus, appellant has not demonstrated clear evidence of error.

Accordingly, 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.

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.

²² *R.C.*, Docket No. 21-0617 (issued August 25, 2023); *A.A.*, Docket No. 20-1399 (issued March 10, 2021); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

²³ *Supra* note 18.

²⁴ *J.J.*, Docket No. 26-0096 (issued March 11, 2026).

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2026
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