

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

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V.B., Appellant )  
and ) Docket No. 23-0581  
DEPARTMENT OF VETERANS AFFAIRS, )  
JACKSON VA MEDICAL CENTER, )  
Jackson, MS, Employer )  
Issued: January 20, 2026

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*Appearances:*

*Lisa Varughese, Esq.*, for the appellant<sup>1</sup>  
*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  
JANICE B. ASKIN, Judge

**JURISDICTION**

On March 16, 2023 appellant, through counsel, filed a timely appeal from a September 28, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> As more than 180 days has elapsed from OWCP's last merit decision, dated December 20, 2018 to the filing

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<sup>1</sup> 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.

<sup>2</sup> The Board notes that, following the September 28, 2022 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.*

of this appeal, pursuant to the Federal Employees' Compensation Act<sup>3</sup> (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.

### **FACTUAL HISTORY**

On May 10, 2007 appellant then a 43-year-old staff pharmacist filed a traumatic injury claim (Form CA-1) alleging that she injured her left knee and left hip when she slipped and fell, landing on her hands and knees, while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx015 and accepted it for left medial collateral ligament sprain, left medial meniscus old bucket handle tear, left knee chondromalacia patellae, aggravation of preexisting left knee osteoarthritis, and left hip and thigh sprain. OWCP paid appellant wage-loss compensation on the supplemental and periodic rolls effective July 6, 2007.

Appellant underwent OWCP-authorized left knee arthroscopy on July 11, 2007 and left knee total arthroplasty on June 16, 2013.

On October 17, 2013 the employing establishment offered appellant a temporary position of modified clinical staff pharmacist. By letter dated November 13, 2013, OWCP informed appellant that the modified clinical staff pharmacist position was suitable, in accordance with her medical restrictions. It advised that she had 30 days to accept the position, or her compensation benefits would be terminated.

By decision dated December 18, 2013, OWCP terminated appellant's entitlement to wage-loss compensation and schedule award benefits, effective that date, pursuant to 5 U.S.C. § 8106(c).

After several requests for reconsideration, by decision dated December 20, 2018, OWCP modified the December 18, 2013 termination decision, finding that the appropriate grounds for termination was 20 C.F.R. § 10.500, not 5 U.S.C. § 8106(c).

On June 30, 2022 appellant requested reconsideration and submitted additional evidence, including an October 4, 2005 peripheral vascular lab requisition form, as well as a number of physical therapy reports dated from November 20, 2017 through January 8, 2018. In a report dated February 13, 2017, Allison G. Dowd, Psy.D. a clinical psychologist, diagnosed chronic adjustment disorder with anxiety disorder with depressed mood. A February 10, 2022 note from Nilka J. Rivera-Ortiz, Psy.D., a clinical psychologist, diagnosed chronic adjustment disorder with stress/anxiety related to psychosocial stressors. In an April 27, 2022 report Shalonda Reed, a

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

licensed vocational nurse, diagnosed secondary lymphedema, bilateral total knee replacements, and leg-length discrepancy. Appellant also submitted excerpts from online medical publications.<sup>4</sup>

By decision dated September 28, 2022, 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.<sup>5</sup> To be entitled to a merit review of an OWCP decision, a request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>6</sup> Timeliness is determined by the document receipt date of the request for reconsideration as is indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS).<sup>7</sup> The Board has found that the imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>8</sup>

OWCP may not deny a request for reconsideration solely because it was untimely filed. When a request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether the request demonstrates clear evidence that OWCP's most recent merit decision was in error.<sup>9</sup> 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 demonstrates clear evidence of error on the part of OWCP.<sup>10</sup> In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.<sup>11</sup>

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<sup>4</sup> Appellant further asserted that her claim should be expanded to accept additional conditions. However, as OWCP has not adjudicated that issue, it is not presently before the Board.

<sup>5</sup> 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

<sup>6</sup> 20 C.F.R. § 10.607(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

<sup>8</sup> *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).

<sup>9</sup> See 20 C.F.R. § 10.607(b); *R.S.*, Docket No. 19-0180 (issued December 5, 2019); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

<sup>10</sup> *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; *supra* note 7 at Chapter 2.1602.5(a) (September 2020).

<sup>11</sup> *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue decided by OWCP.<sup>12</sup> The evidence must be positive, precise, and explicit, and it must manifest on its face that OWCP committed an error. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>13</sup> 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 evidence of error on the part of OWCP.<sup>14</sup> To demonstrate clear evidence of error, the evidence must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must raise a substantial question as to the correctness of OWCP's decision.<sup>15</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP such that it abused its discretion in denying merit review in the face of such evidence.<sup>16</sup>

## ANALYSIS

The Board finds that OWCP properly denied appellant's June 30, 2022 request for reconsideration of the merits of her claim, as it was untimely filed and failed to demonstrate clear evidence of error.

OWCP's last merit decision was dated December 20, 2018. Appellant had one year from OWCP's December 20, 2018 decision to request reconsideration. As OWCP did not receive her request for reconsideration until June 30, 2022, more than one year after the December 20, 2018 merit decision, appellant's request was, therefore, untimely filed. Consequently, she must demonstrate clear evidence of error on the part of OWCP in its December 20, 2018 decision.<sup>17</sup>

With her request for reconsideration, appellant submitted a February 13, 2017 note from Dr. Dowd and a February 10, 2022 note from Dr. Rivera-Ortiz, diagnosing chronic adjustment disorder. Appellant also provided excerpts from online medical publications, an October 4, 2005 peripheral vascular lab requisition form, physical therapy notes, and notes from Ms. Reed, a licensed vocational nurse. As noted, clear evidence of error is intended to represent a difficult standard.<sup>18</sup> 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 enough to show that evidence could

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<sup>12</sup> 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); *supra* note 7 at Chapter 2.1602.5(a) (February 2016).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *Robert G. Burns*, *supra* note 10.

<sup>16</sup> *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

<sup>17</sup> *G.H.*, Docket No. 22-0394 (issued February 6, 2023); *supra* note 10.

<sup>18</sup> *J.N.*, Docket No. 22-0899 (issued December 19, 2022); *J.M.*, *supra* note 11.

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.<sup>19</sup> Accordingly, OWCP properly denied her reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

**CONCLUSION**

The Board finds that OWCP properly denied appellant's June 30, 2022 request for reconsideration of the merits of her claim, as it was untimely filed and failed to demonstrate clear evidence of error.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 28, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 20, 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

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<sup>19</sup> See J.N., *id.*; S.F., Docket No. 09-0270 (issued August 26, 2009).