

¹ The Board notes that, during the pendency of this appeal, OWCP issued a May 6, 2026 nonmerit decision, denying appellant's April 15, 2026 request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error. However, the Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). Therefore, OWCP's May 6, 2026 decision is set aside as null and void. 20 C.F.R. §§ 501.2(c)(3), 10.626; *see D.M.*, Docket No. 22-1152 (issued March 28, 2023); *Order Dismissing Appeal, M.P.*, Docket No. 20-0200 (issued May 25, 2022); *Douglas E. Billings*, 41 ECAB 880 (1990).

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

ISSUE

The issue is whether OWCP properly denied appellant's January 5, 2026 request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On February 8, 2024 appellant, then a 69-year-old facility management systems specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained stress and anxiety due to factors of his federal employment, including pain from a prior accepted work injury, harassment, and reprisal following a second request for a reasonable accommodation (RA).⁴ He noted that he first became aware of his condition on July 21, 2023 and realized its relation to his federal employment on October 1, 2023.

In support of his claim, appellant submitted an October 6, 2023 polygraph report; a January 31, 2024 alternative work agreement granting telework from his home office five hours per day, for five days; notification of personnel action (Standard Form (SF) 50) forms dated January 1, 2023 and January 14, 2024; and a position description for facility management specialist.

In a development letter dated February 27, 2024, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish the claim and afforded him 60 days to submit the necessary evidence. In a separate development letter dated February 27, 2024, OWCP requested information from the employing establishment, including comments from a knowledgeable supervisor regarding appellant's allegations. It afforded the employing establishment 30 days to respond.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the January 29, 2026 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*

⁴ OWCP assigned the present claim OWCP File No. xxxxxx643. Under OWCP File No. xxxxxx455, OWCP accepted a March 15, 2023 occupational disease claim (Form CA-2) for aggravation of lumbar intervertebral disc degeneration, aggravation of lumbar spondylosis without myelopathy or radiculopathy, lumbar spine fusion, post-laminectomy syndrome, chronic pain syndrome, lumbosacral disc degeneration, lumbosacral spinal stenosis, sacroiliac joint sprain, thoracolumbar spondylosis with myelopathy, cervical region fusion, and cervicothoracic spondylosis with myelopathy. On December 16, 2024, OWCP administratively combined OWCP File Nos. xxxxxx643 and xxxxxx455, with the latter designated as the master file.

In response, appellant submitted medical evidence.⁵

In a July 21, 2023 note, Dr. Rawan Musa, an internist, requested that appellant be allowed to continue working from home. She diagnosed advanced degenerative disc disease, which she stated caused appellant significant chronic daily pain.

In a report dated October 12, 2023, Dr. John W. Ellis, a physician Board-certified in family medicine, related that appellant had a history of prior back injuries; however, on October 1, 2022, appellant's office space was moved to the second floor, which required that he descend and ascend stairs 30 times a day to obtain documents. He conducted a physical examination, and diagnosed lumbar disc degeneration, lumbar facet joint arthropathy, lumbar spondylopathy facet disease, lumbar radiculopathy, lumbosacral region disc disorder with radiculopathy, lumbar intervertebral disc disorders with myelopathy, and lumbar disc degeneration. Dr. Ellis attributed the diagnosed conditions to appellant's employment.

In a December 7, 2023 report, Dr. Musa diagnosed lumbar spondylosis without myelopathy or radiculopathy.

In a letter dated July 25, 2023, the employing establishment advised appellant that his RA request for temporary situational telework was granted, as it related to his upcoming spinal surgery. An e-mail dated August 12, 2023 from M.N., appellant's supervisor, advised appellant that he was marked absent without leave (AWOL) "this past Tuesday" as he had not reported to the headquarters office or requested leave, as required by his RA schedule.

Appellant submitted e-mail messages regarding his request for RA. In an e-mail dated August 17, 2023, M.N. related that when appellant began work at the employing establishment in January 2021, he requested an office on the second floor. After renovation of office space on the second floor, appellant was allowed to move upstairs. In an e-mail dated October 4, 2023, appellant related that he was not offered downstairs office space even though an office was available. In an e-mail dated March 5, 2024, L.C., an employee and labor relations specialist, related that management had adequately engaged in the interactive RA process and had offered several effective accommodations including a move to a downstairs office, an elevator for his use, as well as his current telework status.

In a February 27, 2024 report, Lera S. Kasseroer, a psychiatric mental health nurse practitioner, diagnosed anxiety disorder and moderate major depressive disorder.

In a March 5, 2024 response to OWCP's development questionnaire, appellant alleged harassment and false claims made by his employer.

By decision dated August 9, 2024, OWCP denied appellant's emotional/stress-related condition claim, finding that he was not injured in the performance of duty as he had not established a compensable employment factor. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

⁵ Several reports were received from physicians who evaluated appellant for lumbar spine conditions in 2022.

On August 28, 2024 appellant requested reconsideration. No additional evidence was received.

By decision dated September 5, 2024, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On September 17, 2024 appellant again requested reconsideration. In support thereof, he submitted a series of e-mails from August 2023 related to a change in his work schedule. Additional e-mails from M.N., dated from October 26, 2023, related to monthly fleet utilization issues, which appellant alleged constituted harassment. OWCP also received e-mails from M.C. to appellant regarding training issues, documenting that appellant had received training; November 20, 2023 e-mails which discussed appellant's return of government equipment while he was on total temporary disability status; and e-mails which discussed issues regarding an air conditioner and refrigerator. Appellant also resubmitted medical evidence which was previously of record.

By decision dated December 16, 2024, OWCP denied modification.

Appellant subsequently submitted an August 9, 2024 letter wherein he reiterated his prior allegations and related that his coworkers had lied regarding statements he had made to them regarding his medical condition and medications. He also alleged that W.P. had improperly shared appellant's medical information during a morning staff meeting. Appellant again listed his disagreements with employing establishment actions and reiterated that he had taken a polygraph examination to document his truthfulness. Additional medical evidence was also received. Appellant also resubmitted e-mail and medical evidence which was previously of record.

On January 5, 2026 appellant requested reconsideration. In support thereof, he submitted a chronology of his medical treatment, including the dates of treatment and corresponding providers. Appellant also provided a listing of his medication. He also resubmitted his October 6, 2023 polygraph test results.

By decision dated January 29, 2026, denied appellant's January 5, 2026 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.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.*,

⁶ *Supra* note 2 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).

⁷ 20 C.F.R. § 10.607(a).

the “received date” in OWCP’s Integrated Federal Employees’ Compensation System (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 error is intended to represent a difficult standard.¹⁶ 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.¹⁷ The Board makes

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

⁹ *B.B.*, Docket No. 26-0117 (issued March 26, 2026); *M.D.*, Docket No. 25-0435 (issued May 23, 2025); *G.E.*, *supra* note 6; *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).

¹⁰ *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).

¹¹ *M.D.*, *supra* note 9; *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 7 at Chapter 2.1602.5 (September 2020).

¹² *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).

¹⁶ *See G.G.*, *supra* note 9; *see also* 20 C.F.R. § 10.607(b); *supra* note 8 at Chapter 2.1602.5 (September 2020).

¹⁷ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *id.* at Chapter 2.1602.5a (September 2020).

an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁸

ANALYSIS

The Board finds that OWCP properly denied appellant's January 5, 2026 request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

OWCP's regulations¹⁹ and procedures²⁰ establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case.²¹ The last merit decision pertaining to appellant's emotional/stress-related condition claim was dated December 16, 2024. As OWCP received his request for reconsideration on January 5, 2026, more than one year after the December 16, 2024 merit decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in denying his emotional/stress-related condition claim.

On reconsideration, appellant submitted an additional statement summarizing his claim, additional medical evidence, copies of e-mails and medical evidence previously of record, a chronology of his medical treatment, a list of his medications, and a copy of the polygraph previously submitted. The term clear evidence of error is intended to represent a difficult standard and the arguments provided here are not the type of positive, precise and explicit evidence which manifested on its face that OWCP committed an error in denying appellant's emotional/stress-related condition claim.²² The evidence appellant submitted on reconsideration did not on its face demonstrate error on the part of OWCP in its December 16, 2024 merit decision.²³ Furthermore, the additional medical evidence he submitted was not relevant to the underlying issue of whether he established a compensable employment factor, which is factual in nature. The Board therefore finds that the evidence submitted on reconsideration is insufficient to demonstrate clear evidence of error on the part of OWCP in its December 16, 2024 decision.²⁴

¹⁸ *G.B.*, *supra* note 15; *D.S.*, Docket No. 17-0407 (issued May 24, 2017); *George C. Vernon*, 54 ECAB 319 (2003).

¹⁹ 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).

²⁰ *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).

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); *Robert G. Burns*, 57 ECAB 657 (2006).

²³ *C.B.*, Docket No. 25-107 (issued December 4, 2024).

²⁴ *Id.*; *see also W.R.*, Docket No. 18-1042 (issued February 12, 2019).

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

CONCLUSION

The Board finds that OWCP properly denied appellant's January 5, 2026 request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2026 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 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