

¹ 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.

this appeal, pursuant to the Federal Employees' Compensation Act (FECA)² 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 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On January 18, 2022 appellant, then a 28-year-old transportation security officer (TSO) filed a traumatic injury claim (Form CA-1) alleging that on December 11 and 13, 2021 she was physically assaulted, intimidated, and subjected to a management-forced confrontation while in the performance of duty, which resulted in anxiety, fear of returning to work, headaches, nausea, cramping, and an inability to fall asleep/stay asleep and focus. She stopped work on January 15, 2022.

In an accompanying narrative statement, appellant further described work incidents that she attributed to her emotional/stress-related conditions. She alleged that, on December 11, 2021, M.S., a lead transportation security officer, struck appellant on the top of her head with a closed fist from behind while she was sitting and watching a video in the employing establishment breakroom. She further alleged that on December 13, 2021 at approximately 12:45 p.m., M.S. repeatedly struck appellant in the right shoulder with closed fists.

OWCP subsequently received medical evidence.

In a February 24, 2022 letter, the employing establishment contended that she had not submitted any medical documentation of a physical or an emotional injury.

In a March 24, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide information regarding appellant's claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It also requested that the employing establishment identify any agency employees who might have additional information regarding appellant's allegations and provide witness statements from such employees. OWCP afforded both parties 30 days to respond.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant's representative 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.*

In an April 10, 2022 response, appellant reiterated her allegations. In support of her claim, she submitted witness statements attesting to the alleged December 11 and 13, 2021 incidents.

In an April 22, 2022 development letter, OWCP requested that the employing establishment review appellant's April 10, 2022 statement and provide comments from a knowledgeable supervisor regarding the accuracy of her allegations. It also requested that the employing establishment describe accommodations made for appellant due to her stress, and provide a copy of her position description.

OWCP subsequently received additional medical evidence.

In a letter dated May 18, 2022, the employing establishment responded to OWCP's April 22, 2022 development letter, contending that appellant had failed to establish a compensable factor of employment. In support thereof, it submitted evidence including a December 27, 2021 counseling memorandum which was issued to M.S. for inappropriate conduct regarding the alleged December 11, 2021 incident.

OWCP also received an employing establishment incident investigation report regarding the December 11, 2021 incident wherein appellant claimed she was struck on the top of the head, and claimed another undated incident during which she was struck on the back and shoulder. The report concluded that while M.S. did touch appellant, the touching was due to a cultural misunderstanding and not workplace violence or harassment. M.S. had been instructed not to touch appellant, and further actions were taken to resolve the conflict.

By decision dated March 23, 2023, OWCP denied appellant's claim for an emotional/stress-related condition sustained in the performance of duty, finding that she had not established a compensable employment factor, and, thus, the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received medical evidence, which noted evaluation of appellant's emotional/stress-related conditions.

OWCP also received an April 16, 2024 memorandum, wherein the employing establishment finalized its proposal to remove appellant from her transportation security officer position and terminated her employment, effective that date, based upon fitness for duty.

Additionally, OWCP received a July 23, 2025 letter, wherein the employing establishment advised appellant that her application for disability retirement had been approved because she had been found to be disabled from her transportation security officer position due to post-traumatic stress disorder.

On February 12, 2026 appellant, through her representative, requested reconsideration of the March 23, 2023 decision, contending that the employing establishment's December 27, 2021 counseling memorandum established that the alleged December 11, 2021 incident was a compensable factor of appellant's employment.

Appellant resubmitted the December 27, 2021 counseling memorandum.

By decision dated March 2, 2026, 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.⁴ OWCP's regulations⁵ 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.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. Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).⁷ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁸

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.⁹ 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.¹⁰ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹¹

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹² 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

⁴ 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).

⁵ 20 C.F.R. § 10.607(a).

⁶ *B.J.*, *supra* note 4; *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).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

⁸ *B.J.*, *supra* note 4; *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).

⁹ *See* 20 C.F.R. § 10.607(b); *B.J.*, *id.*; *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

¹⁰ *B.J.*, *id.*; *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).

¹¹ *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).

¹² *B.J.*, *supra* note 4; *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 7 at Chapter 2.1602.5a (September 2020).

substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹³

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁴ The claimant must present evidence which on its face shows that OWCP made an error.¹⁵ 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.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, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The last merit decision was issued by OWCP on March 23, 2023. As appellant's request for reconsideration was not received by OWCP until February 12, 2026, more than one year after the March 23, 2023 decision, pursuant to 20 C.F.R. § 10.607(a), the request for reconsideration was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in denying the claim.¹⁸

On reconsideration, appellant, through her representative, resubmitted the December 27, 2021 counseling memorandum that was previously of record. She also submitted the employing establishment's July 23, 2025 letter approving her application for disability retirement and the April 16, 2024 memorandum finalizing the removal of appellant from her employment. OWCP also received medical evidence, which noted evaluation of appellant's emotional/stress-related conditions. As noted, clear evidence of error is intended to represent a difficult standard.¹⁹ It is not enough to show that evidence could be construed so as to produce a contrary conclusion. Instead, the evidence must raise a substantial question as to the correctness of OWCP's decision.²⁰ This evidence submitted on reconsideration does not raise a substantial question as to the correctness of OWCP's March 23, 2023 decision. The Board thus finds that OWCP properly

¹³ *B.J., id.; L.J.*, Docket No. 23-0282 (issued May 26, 2023); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁴ *See B.J., id.; see also* 20 C.F.R. § 10.607(b); *supra* note 7 at Chapter 2.1602.5 (September 2020).

¹⁵ *J.D.*, Docket No. 25-0163 (issued May 22, 2025); *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

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

¹⁷ *J.D., id.; 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).

¹⁸ 20 C.F.R. § 10.607(b); *D.Z.*, Docket No. 25-0422 (issued June 26, 2025); *S.C.*, Docket No. 20-1537 (issued April 14, 2021); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *see Debra McDavid*, 57 ECAB 149 (2005).

¹⁹ *See supra* note 14.

²⁰ *See supra* note 13.

denied appellant's February 12, 2025 request for reconsideration of the merits of her claim 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.

ORDER

IT IS HEREBY ORDERED THAT the March 2, 2026 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 28, 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