

FACTUAL HISTORY

On March 12, 2020 appellant, then a 36-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 10, 2020 she injured her lower back when she was struck by an all-purpose container while in the performance of duty. She stopped work on the date of injury. OWCP accepted the claim for lumbar sprain and later expanded its acceptance of the claim to include right sacroiliac (SI) joint sprain. It paid appellant wage-loss compensation on the supplemental rolls effective April 25, 2020, and on the periodic rolls effective May 24, 2020.

On May 28, 2022 appellant returned to work in a full-time modified-duty position.

In medical reports and duty status reports (Form CA-17) dated August 12, 2022 through June 23, 2023, Dr. Dalip Pelinkovic, a Board-certified orthopedic surgeon, diagnosed lumbar sprain and aggravation of scoliosis. He released appellant to return to modified-duty work, six hours per day.³

In a medical report dated August 9, 2023, Dr. Pelinkovic noted that appellant related complaints of pain in her lower back and right leg, instability of the right leg, and muscle spasms and had undergone two right-sided SI joint injections. He documented physical examination findings and diagnosed lumbar spondylosis with radiculopathy. Dr. Pelinkovic opined that appellant was unable to return to work. In CA-17 forms dated July 26 through October 16, 2023, he indicated that she was “medically incapacitated.”

On October 16, 2023 appellant filed claims for compensation (Form CA-7) for intermittent disability from work for the period June 17 through July 28, 2023 and for total disability from work commencing July 29, 2023.

In a medical report dated October 16, 2023, Dr. Pelinkovic diagnosed lumbar spondylosis with radiculopathy and opined that appellant was totally disabled. In a narrative letter dated October 31, 2023, he diagnosed L4-5 and L5-S1 disc displacement, lumbar radiculopathy, a resolved lumbar sprain, and SI joint sprain and recommended right L4-5 and L5-S1 transforaminal steroid injections.

By decision dated December 14, 2023, OWCP denied appellant’s claims for wage-loss compensation, finding that the medical evidence of record was insufficient to establish disability from work commencing June 17, 2023, causally related to the accepted employment injury.

OWCP continued to receive evidence, including December 28, 2023 and December 16, 2024 magnetic resonance imaging (MRI) scans of the lumbar spine, which revealed lumbar disc bulges and scoliosis.

In follow-up reports dated January 19, 2024 through March 7, 2025, Dr. Pelinkovic opined that appellant was totally disabled from all work.

³ OWCP paid appellant wage-loss compensation on the supplemental rolls from September 3, 2022 through June 16, 2023.

On April 28, 2025, appellant requested reconsideration of OWCP's December 14, 2023 decision.

By decision dated May 8, 2025, 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.⁴ 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.⁵ Timeliness is determined by the document receipt date, *i.e.*, the "received date" in OWCP's iFECS.⁶ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁷

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.⁸ It'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 for reconsideration demonstrates "clear evidence of error" on the part of OWCP.⁹

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹⁰ 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. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. 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 error on the part of OWCP.

⁴ *Supra* note 1 at § 8128(a); *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 Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁷ *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).

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

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).

¹⁰ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *id.* at Chapter 2.1602.5 (September 2020).

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹¹ The claimant must present evidence which on its face demonstrates that OWCP made an error (for example, proof that a schedule award was miscalculated). 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.¹² The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹³

ANALYSIS

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.

A request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.¹⁴ As appellant's request for reconsideration was not received by OWCP until April 28, 2025, more than one year after the issuance of its December 14, 2023 merit decision, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in denying the claim.¹⁵

In support of her untimely request for reconsideration, appellant submitted lumbar MRI scans dated December 28, 2023 and December 16, 2024, and medical reports by Dr. Pelinkovic dated January 19, 2024 through March 7, 2025. As noted, clear evidence of error is intended to represent a difficult standard.¹⁶ 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.¹⁷ It is not enough to show that evidence could be construed so as to produce a contrary conclusion.¹⁸ Moreover, the MRI scans are irrelevant as the Board has long held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injury caused the claimed disability.¹⁹ The argument and evidence submitted by appellant in support of her untimely request for reconsideration do not raise a

¹¹ *G.G.*, *supra* note 8; *see also* 20 C.F.R. § 10.607(b); *id.* at Chapter 2.1602.5a (September 2020).

¹² *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *id.* at Chapter 2.1602.5(a) (September 2020).

¹³ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹⁴ 20 C.F.R. § 10.607(a).

¹⁵ *Id.* at § 10.607(b); *see R.T.*, Docket No. 19-0604 (issued September 13, 2019); *see Debra McDavid*, 57 ECAB 149 (2005).

¹⁶ *J.N.*, Docket No. 22-0899 (issued December 19, 2022); *J.M.*, Docket No. 19-1842 (issued April 23, 2020).

¹⁷ *See E.R.*, Docket No. 24-0681 (issued July 29, 2024); *K.W.*, Docket No. 19-1808 (issued April 2, 2020); *J.S.*, *supra* note 12.

¹⁸ *Id.*

¹⁹ *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

substantial question as to the correctness of the denial of her claim.²⁰ Thus, the evidence is insufficient to demonstrate clear evidence of error.²¹

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

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 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

²⁰ See *P.T.*, Docket No. 18-0494 (issued July 9, 2018).

²¹ *J.C.*, Docket No. 20-1250 (issued May 24, 2021); *W.D.*, Docket No. 19-0062 (issued April 15, 2019).