



## **FACTUAL HISTORY**

This case was previously before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On May 8, 2017 appellant, the deceased employee's son, filed a claim for compensation by widow, widower, and/or children (Form CA-5), alleging that asbestos exposure caused his father's death in December 19, 2001. By decision dated August 4, 2017, OWCP denied the survivor benefits claim, finding that it was untimely filed. On August 14, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. During the hearing, held on January 10, 2018, appellant asserted that he was incompetent to timely file the survivor benefits claim. The hearing representative advised him to submit evidence substantiating his allegation. By decision dated March 12, 2018, the hearing representative affirmed the August 4, 2017 decision.

Appellant appealed to the Board. By decision dated December 21, 2018, the Board affirmed the March 12, 2018 hearing decision, finding that appellant's survivor benefits claim was barred by the applicable time limitations of FECA.<sup>4</sup> The Board explained that the claim had not been filed within three years of the employee's death and that appellant had not met his burden of proof to establish any applicable statutory exception to the three-year time limitation.

On March 7, 2019 appellant requested reconsideration. He maintained that he was incompetent to timely file the survivor benefits claim due to a mental impairment. In support thereof, appellant submitted an unsigned August 8, 2003 document wherein his mother requested that the Social Security Administration pay her his supplemental security income benefits due to his mental impairment. He also submitted documentation concerning his father's medical treatment and employment.

By decision dated May 20, 2019, OWCP denied modification of its prior decision.

Appellant appealed to the Board on June 10, 2019. By decision dated March 9, 2020, the Board affirmed OWCP's May 20, 2019 decision, finding that appellant had not established that he filed a timely claim for survivor benefits in accordance with 5 U.S.C. § 8122 as there was no probative medical evidence of record to support the assertion that he was incompetent to timely file a claim.<sup>5</sup>

On February 8, 2021 appellant requested reconsideration and submitted an e-mail from Dr. Snehal Smart, a patient advocate, addressing pleural plaques, nodules, and asbestosis. He also submitted additional evidence regarding his father's medical treatment.

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<sup>3</sup> Docket No. 19-1409 (issued March 9, 2020); Docket No. 18-0910 (issued December 21, 2018).

<sup>4</sup> *Id.*

<sup>5</sup> *Supra* note 3.

By decision dated February 12, 2021, OWCP denied appellant's February 8, 2021 request for reconsideration, finding that it was untimely filed, and failed to demonstrate clear evidence of error.

On June 24, 2025 appellant again requested reconsideration. He provided a narrative statement asserting that he was the designated beneficiary of his father's workers' compensation survivor benefits, but had not received payment. Appellant asserted that his father was illiterate and that a law firm had taken advantage of him due to this fact. He further alleged constitutional violations of the sixth and fourteenth amendments. Appellant provided proof of representation dated July 21, 2017; a request for authorization for his father's estate, his father's work history, and his father's original asbestos petition from February 5, 1999. He also resubmitted a November 25, 1998 report of Dr. Bondarevsky, and documentation concerning his father's employment that was previously of record.

By decision dated September 12, 2025, OWCP denied appellant's June 24, 2025 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.<sup>6</sup> 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.<sup>7</sup> Timeliness is determined by the document receipt date *i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS).<sup>8</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>9</sup>

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.<sup>10</sup> 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

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<sup>6</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>7</sup> 20 C.F.R. § 10.607(a).

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

<sup>9</sup> *W.B.*, Docket No. 23-0473 (issued August 29, 2023); *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>10</sup> See 20 C.F.R. § 10.607(b); *R.C.*, Docket No. 21-0617 (issued August 25, 2023); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

OWCP.<sup>11</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>12</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>13</sup> 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.<sup>14</sup>

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.<sup>15</sup> The claimant must present evidence which on its face demonstrates that OWCP made an error. 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.<sup>16</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>17</sup>

### 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.<sup>18</sup> As appellant's request for reconsideration was not received by OWCP until June 24, 2025, more than one year after the March 9, 2020 merit

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<sup>11</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(b); *supra* note 8 at Chapter 2.1602.5 (September 2020).

<sup>12</sup> *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).

<sup>13</sup> *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).

<sup>14</sup> *L.J.*, Docket No. 23-0282 (issued May 26, 2023); *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *J.M.*, *supra* note 12; *Robert G. Burns*, *supra* note 12.

<sup>15</sup> 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).

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

<sup>17</sup> *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).

<sup>18</sup> 20 C.F.R. § 10.607(a).

decision, it was untimely filed. Consequently, he must demonstrate clear evidence of error by OWCP in denying the claim.<sup>19</sup>

In support of his untimely request for reconsideration, appellant submitted a narrative statement asserting that he was the designated beneficiary for his father's workers' compensation survivor benefits. He asserted that his father was illiterate and that a law firm had taken advantage of him. Appellant further alleged constitutional violations of the sixth and fourteenth amendments. He submitted proof of representation dated July 21, 2017; a request for authorization for his father's estate; his father's work history; and his father's original asbestos petition from February 5, 1999. Appellant also resubmitted a November 25, 1998 report of Dr. Bondarevsky, and documentation concerning his father's employment that was previously of record. The Board notes that clear evidence of error is intended to represent a difficult standard.<sup>20</sup> To demonstrate clear evidence of error, a claimant must submit evidence that is relevant to the issue which was decided by OWCP. The evidence must be positive, precise, and explicit, and manifest on its face that OWCP committed an error.<sup>21</sup> The argument and evidence submitted by appellant in support of his untimely request for reconsideration do not raise a substantial question as to the correctness of the denial of his claim.<sup>22</sup> Thus, the evidence is insufficient to demonstrate clear evidence of error.

### **CONCLUSION**

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.

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

<sup>20</sup> *Supra* note 18.

<sup>21</sup> *Supra* note 16. *See also B.T.*, Docket No. 25-0514 (issued July 17, 2025); *J.F.*, Docket No. 24-0883 (issued December 2, 2024); *I.L.*, Docket No. 21-1146 (issued January 31, 2022); *A.A.*, Docket No. 19-1219 (issued December 10, 2019); *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>22</sup> *See I.D.*, Docket No. 25-0807 (issued November 20, 2025); *P.T.*, Docket No. 18-0494 (issued July 9, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 12, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 18, 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