United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant	)	
and	)	**Docket No. 26-0518**
	)	**Issued: October 26, 2026**
DEFENSE AGENCIES, DEFENSE HEALTH AGENCY, WALTER REED NATIONAL MILITARY MEDICAL CENTER, Bethesda, MD, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 8, 2026 appellant filed a timely appeal from an April 9, 2026 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated March 20, 2025, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the April 9, 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.*

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 March 17, 2021 appellant, then a 50-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 13, 2021 she sustained head, neck, and lower back injuries when a patient hit and attacked her, causing her to fall and strike her head against a wall while in the performance of duty. She stopped work on March 13, 2021 and returned on March 15, 2021. OWCP accepted the claim for cervical sprain and paid appellant wage-loss compensation on the supplemental rolls from December 13, 2021 through May 22, 2022.

In multiple reports dated from November 14, 2022, Dr. Ernest Africano, a Board-certified internist, diagnosed cervical sprain, cervical spondylosis with radiculopathy, lumbar sprain, lumbar radiculopathy, lumbar disc displacement, and lumbar inflammatory spondylopathy. He opined that the diagnosed conditions were causally related to the accepted March 13, 2021 employment injury.

On December 14, 2022 OWCP referred appellant, the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Randy F. Davis, a Board-certified orthopedic surgeon for a second opinion evaluation to determine the extent of any disability, and appropriate treatment. In a January 24, 2023 report, Dr. Davis related appellant's physical examination findings, his review of the medical evidence, and review of the SOAF. He diagnosed cervical spondylosis with radiculopathy, and lumbar ligament sprain, which he attributed to the work injury. Dr. Davis stated that he was unable to specifically diagnose radiculopathy or unspecified lumbar inflammatory spondylopathy. He opined that the work-related conditions had not resolved and that appellant was disabled from performing her date-of-injury position. However, Dr. Davis opined that she was capable of working a sedentary or light-duty job with restrictions he outlined in an attached work capacity evaluation form (Form OWCP-5c). On the form appellant's restrictions were noted as pushing, pulling, lifting, and squatting limited to 20 pounds.

On March 6, 2023 Dr. Africano requested expansion of the acceptance of appellant's claim to include cervical spondylosis with radiculopathy, lumbar ligament sprain, lumbar radiculopathy, and lumbar intervertebral disc displacement. He opined that appellant was disabled from performing her date-of-injury job, but capable of performing light-duty work.

By decision dated May 11, 2023, OWCP expanded acceptance of the claim to include cervical spondylosis with radiculopathy and lumbar ligament sprain.

OWCP continued to receive medical reports from Dr. Africano diagnosing lumbar radiculopathy, lumbar disc displacement, and lumbar inflammatory spondylopathy, which he attributed to the accepted March 13, 2023 employment injury.

On January 25, 2024 OWCP referred appellant to Dr. Ifeanyi Nwaneshiudu, Board-certified in occupational medicine, for an impartial medical examination, to resolve the conflict in medical opinion evidence between appellant's attending physician and Dr. Davis, the second opinion specialist, regarding whether lumbar radiculopathy and lumbar spondylopathy were causally related to the accepted March 13, 2021 employment injury.

In a March 1, 2024 report, Dr. Nwaneshiudu, serving as the impartial medical examiner (IME), noted appellant's history of injury and her prior medical treatment. He related appellant's physical examination findings and diagnosed cervical and lumbar sprains, cervical and lumbar degenerative disc disease, mild bilateral carpal tunnel syndrome, and lumbar radiculopathy. Dr. Nwaneshiudu opined that appellant's accepted March 13, 2021 employment injury temporarily aggravated appellant's diagnosed conditions, but the aggravation had not ceased.

In an April 1, 2024 addendum, Dr. Nwaneshiudu opined that appellant's diagnosed lumbar spondylopathy and lumbar intervertebral disc displacement were not causally related to the accepted March 13, 2021 employment injury. He also found no evidence of cervical and lumbar radiculopathy.

By decision dated April 18, 2024, OWCP denied expansion of appellant's claim to include lumbar radiculopathy and lumbar intervertebral disc displacement.

On December 21, 2024 appellant requested reconsideration.

OWCP received a report dated December 23, 2024 from Dr. Yasmin Ahmed, a family practitioner, wherein she diagnosed cervical sprain, cervical spondylosis with radiculopathy, lumbar sprain, lumbar radiculopathy, lumbar disc displacement, and lumbar inflammatory spondylopathy.

By decision dated March 20, 2025, OWCP denied modification of the April 18, 2024 decision.

OWCP subsequently received additional medical evidence. In progress notes covering the period March 10 through July 28, 2025, Dr. Sarah H. Merritt, Board-certified in pain management, diagnosed lumbar and cervical radiculopathy; chronic pain syndrome; low back and thoracic region strain; thoracic and acute cervical sprain; lumbar myofascial pain syndrome; and back muscle spasm.

In progress notes dated April 7, 2025 through March 13, 2026, Dr. Ahmed, noted that appellant's claim had been accepted for cervical and lumbar spine sprains and cervical spondylosis with radiculopathy. She related that appellant's August 18, 2023 magnetic resonance imaging (MRI) scan related an impression of mild spondylosis, congenital canal stenosis; mild bulge with central protrusion abutting the L3 foraminal roots; mild broad bulge L4-5, abutting the L4 foraminal roots; mild bulge L5-S1 abutting the L5 foraminal roots; and lateral stenosis with ligamentous and fact hypertrophy at L3-S1. Dr. Ahmed also related that appellant's March 22, 2024 electromyogram (EMG) and nerve conduction studies (NCS) related an impression of bilateral L4-5 radiculopathy in the right and left lower limb.

OWCP also received progress notes dated April 7, 2025 from Michelle Pipta, a physician assistant, diagnosing myofascial pain, lumbar spondylosis, and lumbar degenerative disc disease with intermediate radiculopathy.

In progress reports dated from March 5, 2025 through March 18, 2026, Dr. Isabel Paci, a chiropractor, diagnosed cervical spondylosis with radiculopathy, lumbar radiculopathy, and lumbar intervertebral disc displacement. She opined that appellant's diagnosed conditions were directly related to appellant's accepted employment injury.

OWCP also received a progress note dated May 13, 2025 from Dr. Kwasi Sharif, a physiatrist, diagnosing cervical and lumbar radiculitis.

In progress notes covering the period August 15 through November 17, 2025, Dr. Alan Gonzalez-Cota, a Board-certified pain management specialist, diagnosed cervical and lumbar ligaments sprain, cervical spondylosis with radiculopathy, lumbar radiculopathy, and lumbar intervertebral disc displacement.

In reports dated August 25, 2025 through March 9, 2026, Rebecca Jackson, a nurse practitioner, diagnosed acute cervical and thoracic sprains; neck muscle, thoracic, and low back strains; back muscle spasms; chronic pain syndrome; cervical and lumbar radiculopathy; lumbar myofascial pain syndrome; and lumbar ligament sprain.

On March 23, 2026 appellant requested reconsideration.

By decision dated April 9, 2026, 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.[3] 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.[4] Timeliness is determined by the document receipt date, *i.e.*, the "received date" in OWCP's iFECS.[5] Imposition of this one-year filing limitation does not constitute an abuse of discretion.[6]

[3] 5 U.S.C. § 8128(a); *J.J.*, Docket No. 26-0096 (issued March 11, 2026); *V.B.*, Docket No. 23-0581; *L.W.,* Docket No. 18-1475 (issued February 7, 2019); *Y.S.,* Docket No. 08-0440 (issued March 16, 2009).

[4] 20 C.F.R. § 10.607(a).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (version 1.0, issued March 16, 2026).

[6] *J.J.*, *supra* note 3; *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).

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.[7] 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.[8] In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.[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. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.[11] 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.[12]

OWCP's procedures note the term clear evidence of error is intended to represent a difficult standard.[13] 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.[14] 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.[15] The Board makes an independent

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

[8] *V.B.*, *supra* note 3; *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 5 at Chapter 2.1602.5(a) (version 1.0, issued March 16, 2026).

[9] *J.J.*, *supra* note 3; *L.C., id.*; *M.L., id*. *See also id.* at § 10.607(b); *supra* note 5 at Chapter 2.1602.5 (version 1.0, issued March 16, 2026).

[10] *J.J.*, *id.*; *S.C.,* Docket No. 18-0126 (issued May 14, 2016); *id.* at Chapter 2.1602.5 (version 1.0, issued March 16, 2026).

[11] *Id.*

[12] *Id.*

[13] *J.J.*, *supra* note 3.; *G.G., supra* note 6; *see also* 20 C.F.R. § 10.607(b); *supra* note 5 at Chapter 2.1602.5a (version 1.0, issued March 16, 2026).

[14] *J.J.*, *id.*; *J.S.,* Docket No. 16-1240 (issued December 1, 2016); *id.* at Chapter 2.1602.5(a) (version 1, issued March 16, 2026).

[15] *V.B.*, *supra* note 3; *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

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.[16]

ANALYSIS

The Board finds that OWCP properly denied appellant's March 23, 2026 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 March 20, 2025. Appellant had one year from OWCP's March 20, 2025 decision to request reconsideration.[17] As OWCP did not receive her request for reconsideration until March 23, 2026, more than one year after the issuance of its March 20, 2025 merit decision, appellant's request was untimely filed. Consequently, she must demonstrate clear evidence of error in the March 20, 2025 decision.[18]

With her request for reconsideration, appellant submitted numerous progress notes from Drs. Merritt, Ahmed, Sharif, Gonzalez-Cota, as well as reports from chiropractor Paci, and reports from Ms. Jackson and Ms. Pipta. As noted, clear evidence of error is intended to represent a difficult standard.[19] 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 be construed so as to produce a contrary conclusion.[20] The evidence submitted by appellant in support of her untimely request for reconsideration did not raise a substantial question as to the correctness of the last merit decision which denied the expansion of her claim.[21] Thus, the evidence is insufficient to demonstrate clear evidence of error.[22]

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.

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[16] *V.B.*, *id.*; *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

[17] 20 C.F.R. § 10.607(a).

[18] *Id.* at. § 10.607(b); *see J.J.*, *supra* note 3; *R.T.,* Docket No. 19-0604 (issued September 13, 2019); *see Debra McDavid,* 57 ECAB 149 (2005).

[19] *V.B.*, *supra* note 3; *J.N.*, Docket No. 22-0899 (issued December 19, 2022); *J.M.*, Docket No. 19-1842 (issued April 23, 2020).

[20] *J.J.*, Docket No, 26-0096 (issued March 11, 2026); *E.R.*, Docket No. 24-0681 (issued July 29, 2024); *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

[21] *J.J.*, *id.*; *P.T.*, Docket No. 18-0494 (issued July 9, 2018).

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

CONCLUSION

The Board finds that OWCP properly denied appellant's March 23, 2026 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 April 9, 2026 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2026
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board