United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 26-0656**
	)	**Issued: October 15, 2026**
DEPARTMENT OF VETERANS AFFAIRS, JOHN D. DINGELL VA MEDICAL CENTER, Detroit, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 7, 2026 appellant filed a timely appeal from an April 13, 2026 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).[1] As more than 180 days has elapsed from the last merit decision dated March 12, 2025, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the case.

[1] Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, she argued the merits of her underlying occupational disease claim. The Board, in exercising its discretion, denies appellant's request for oral argument because the Board does not have jurisdiction over the merits of this case and, thus, the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

[2] 5 U.S.C. § 8101 *et seq*.

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 June 25, 2024 appellant, then a retired 61-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she developed pain in her neck and shoulders due to factors of her federal employment including using her arms and shoulders for 20 years in the intensive care unit (ICU) and pushing and pulling a heavy door with her left arm since January 2024.[3] She noted that she first became aware of her condition and its relationship to her federal employment on June 18, 2024. Appellant stopped work on June 18, 2024 and retired from federal service on June 24, 2024.

In a development letter dated June 27, 2024, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence.

OWCP subsequently received a medical report dated June 18, 2024 by Dr. Sarada Gullapalli, a Board-certified internist, who noted that appellant related complaints of left shoulder pain, which she attributed to "pushing a heavy door to the social worker room" while under restrictions following a November 16, 2022 right shoulder surgery. Dr. Gullapalli documented physical examination findings in the left shoulder and obtained x-rays, which demonstrated minimal acromioclavicular (AC) and glenohumeral osteoarthritis and diffuse osteopenia in the left shoulder. She provided an assessment of "left shoulder pain [status post] pushing heavy door."

In a medical report dated June 24, 2024, Dr. Scott Eathorne, Board-certified in family and sports medicine, provided an assessment of pain of left shoulder joint and degenerative joint disease of the left shoulder.

In an attending physician's report (Form CA-20) dated August 1, 2024, Dr. Sean Bak, a Board-certified orthopedic surgeon and sports medicine specialist, noted that appellant had a "history of right shoulder [reverse total arthroplasty] surgery that required her to use her left arm most of the time. Opening a heavy door at work aggravated the left shoulder." Dr. Bak observed examination findings and diagnosed rupture of left rotator cuff. He checked a box marked "Yes" to indicate that he believed the diagnosed condition was caused or aggravated by an employment activity and explained that "pushing or pulling of a heavy door with one arm can cause irritation."

OWCP, in a follow-up letter dated August 7, 2024, advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the June 27, 2024 letter to submit the necessary evidence. OWCP further advised

[3] OWCP assigned the present claim OWCP File No. xxxxxx403. Appellant previously filed a traumatic injury claim (Form CA-1) for a June 4, 2022 employment injury, which OWCP accepted for right shoulder tendinitis and impingement under OWCP File No. xxxxxx441. OWCP has not administratively combined OWCP File Nos. xxxxxx441 and xxxxxx403.

that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

OWCP subsequently received appellant's response to its development questionnaire. She related that she injured her right shoulder at work in June 2022, underwent surgery in November 2022, and returned to modified-duty work in the social work department in March 2023. From January 2024 through June 18, 2024, appellant used her left arm to pull a heavy fire door open to enter and exit the copy room throughout the workday, which caused pain in her left shoulder. She also asserted that her job duties in the ICU over time caused degenerative joint disease in her shoulders and back.

By decision dated August 30, 2024, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish causal relationship between her medical conditions and the accepted employment factors.

On September 29, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a medical report dated July 23, 2024, Dr. Eathorne noted that "the left shoulder has been a problem for her for quite some time now, although she feels that in recent months it has worsened due to a heavy door that she has to open when she comes and goes at work." He performed a shoulder injection and recommended a magnetic resonance imaging (MRI) scan of the left shoulder.

An August 15, 2024 MRI scan of the left shoulder demonstrated a complete full-thickness tear of the supraspinatus tendon with retraction to the level of the AC joint, tendinosis, adhesive capsulitis, and tears in the long head of the biceps tendon.

On November 13, 2024 OWCP received an undated note by Dr. Bak, who diagnosed a left shoulder rotator cuff tear and indicated that "it is very likely that the repetitive nature of this patient's job as an ICU nurse may have very well contributed to the onset and/or worsening of this condition of her left shoulder."

On November 20, 2024 appellant underwent left reverse total arthroplasty surgery by Dr. Bak. His postoperative diagnosis was left shoulder osteoarthritis and massive rotator cuff tear.

In a Form CA-20 dated January 3, 2025, Dr. Bak noted that appellant related a history of 45 years in the nursing field during which she repetitively reached to change intravenous fluid bags and performed chest compressions. He diagnosed history of left reverse total shoulder arthroplasty and rupture of left rotator cuff and indicated that "pushing or pulling of a heavy door with one arm can cause distress and irritation."

A hearing was held on January 7, 2025.

OWCP subsequently received work restriction notes dated August 8, 2023, and June 24, 2024.

In a letter dated February 25, 2025, Dr. Bak indicated that "surgery was recommended due to an injury that is directly related to the repetitive nature of the duties required of her work as it pertains to the upper extremity."

By decision dated March 12, 2025, OWCP's hearing representative affirmed the August 30, 2024 decision.

On March 18, 2026 appellant filed a request for reconsideration with attachments, including: (1) an article dated November 2018 pertaining to occupational injuries and illnesses among registered nurses; (2) an MRI scan of the right shoulder dated September 8, 2022; (3) a statement by appellant dated January 31, 2026, in which she described her work duties as a nurse and the progression of her shoulder pain; and (4) a narrative report dated February 22, 2026 by Dr. David M. Peck, Board-certified in family and sports medicine, who opined that she was permanently disabled from her preinjury position due to arthritis and chronic pain in her shoulders and back.

By decision dated April 13, 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.[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 Integrated Federal Employees' Compensation System (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] 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.[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

[4] *Supra* note 2 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 (version 1.0, issued March 16, 2026).

[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 6 at Chapter 2.1602.5 (version 1.0, issued March 16, 2026).

[10] *S.C.*, Docket No. 18-0126 (issued May 14, 2016).

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.

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 March 18, 2026, more than one year after the issuance of its March 12, 2025 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 an article dated November 2018, an MRI scan of the right shoulder dated September 8, 2022, a statement dated January 31, 2026, and a narrative report by Dr. Peck dated February 22, 2026. As noted, clear evidence of error is intended to represent a difficult standard.[16] The Board finds that the argument and evidence submitted by appellant in support of her untimely request for reconsideration do not raise a substantial question as to the correctness of the denial of her claim.[17] Thus, the evidence is insufficient to demonstrate clear evidence of error.[18]

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[11] *G.G.*, *supra* note 7; *see also* 20 C.F.R. § 10.607(b); *supra* note 6 at Chapter 2.1602.5a (version 1.0, issued March 16, 2026).

[12] *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *id.* at Chapter 2.1602.5(a) (version 1.0, March 16, 2026).

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

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

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 April 13, 2026 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 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