

ISSUE

The issue is whether OWCP properly 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.

FACTUAL HISTORY

On August 17, 2016 appellant, then a 55-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging on that date she injured her right knee, right elbow, neck, and back when a falling cart pushed her to the ground while in the performance of duty.³ She stopped work on August 20, 2016. OWCP accepted the claim for right knee sprain and contusion. It paid appellant wage-loss compensation on the supplemental rolls, effective October 17, 2016.

Dr. Barry Buffman, an internist, examined appellant on September 12, 2016 and diagnosed high grade tear of the anterior cruciate ligament (ACL) and lateral meniscal tears of the right knee following the August 17, 2016 injury. He provided work restrictions.

In reports dated September 19, 2016 through April 3, 2017, Dr. Arthur I. Garfinkel, a Board-certified orthopedic surgeon, described the August 17, 2016 employment injury and noted prior right knee surgery. He reviewed a September 8, 2016 right knee magnetic resonance imaging (MRI) scan and diagnosed sprain and contusion of the right knee, post-traumatic degenerative joint disease and osteoarthritis of the right knee. Dr. Garfinkel opined that these conditions were causally related to the August 17, 2016 employment injury. He recommended total knee arthroplasty.

Appellant returned to light-duty work on December 12, 2016.

In a January 6, 2017 report, Dr. Jaime Hernandez, an orthopedic surgeon, noted appellant's history of an August 17, 2016 injury and diagnosed right knee osteoarthritis with ACL tear and meniscal tears. She recounted symptoms of knee instability, giving way, and buckling.

Dr. Ronald P. Karzel, a physician Board-certified in sports medicine, completed a February 6, 2017 report, recounting the details of the August 17, 2016 employment incident and reviewing the September 7, 2016 MRI scan. He diagnosed severe degenerative arthritis of the lateral compartment of the right knee, patellofemoral chondromalacia, and ACL tear. Dr. Karzel

³ OWCP assigned the present claim OWCP File No. xxxxxx953. Under OWCP File No. xxxxxx912, OWCP accepted that appellant sustained a work-related right lateral meniscus tear on September 4, 1996. Under OWCP File No. xxxxxx988, it accepted that she sustained a right ankle sprain on August 1, 2002 after falling and twisting her right ankle. On June 27, 2014 appellant filed an occupational disease claim (Form CA-2) alleging an additional right knee condition due to factors of her federal employment including standing, walking, mounting/dismounting her vehicle and ascending and descending stairs. OWCP assigned that claim OWCP File No. xxxxxx848. On December 26, 2015 appellant filed a Form CA-1 claim alleging that she sustained bilateral knee and hand injuries following a fall while in the performance of duty. OWCP assigned that claim OWCP File No. xxxxxx110. Appellant's claims have been administratively combined, with OWCP File No. xxxxxx953 serving as the master file.

opined that appellant's previous right knee surgery likely contributed to her degenerative arthritis.

On March 22, 2017 an unidentified provider informed OWCP that appellant had experienced a nonindustrial fall at home while gardening, and experienced a new injury to her right knee resulting in numbness. Also on March 22, 2017, an OWCP-assigned field nurse reported that appellant's knee had given way causing her to fall at home.

In treatment notes dated March 22, 2017, Dr. Buffman reported that appellant was walking in her backyard and caught her foot on concrete causing her to lose her balance and fall onto her right lower leg below the knee. He noted her accepted August 17, 2016 employment injury and recounted additional symptoms of numbness and tingling from her thigh to her knee. Dr. Buffman diagnosed contusion of the right lower leg, and found appellant totally disabled through March 31, 2017. Appellant stopped work on March 20, 2017.

Dr. Hernandez examined appellant on March 31, 2017.

On April 3, 2017 appellant filed a claim for compensation (Form CA-7) for disability from work commencing March 18, 2017.

In an April 20, 2017 development letter, OWCP informed appellant of the deficiencies of her claim for compensation. It advised her of the type of medical evidence required, and afforded her 30 days to respond.

OWCP subsequently received additional evidence. In a report dated April 14, 2017, Dr. Hernandez described appellant's history of an August 17, 2016 injury, and diagnosed end-stage right knee osteoarthritis. She recommended right knee total arthroplasty as appellant's pain was progressively worsening.

In a May 1, 2017 note, Dr. Garfinkel reviewed the history of an additional injury contained in Dr. Buffman's March 22, 2017 report. He noted that appellant described the March 2017 fall as resulting from buckling of her right knee, rather than tripping on concrete. Dr. Garfinkel repeated his diagnoses of post-traumatic degenerative joint disease, right knee, osteoarthritis, right knee, and sprain/strain of the right knee. He recommended a total right knee arthroplasty, and found that appellant was totally disabled from work.

In a May 9, 2017 report, Dr. Garfinkel opined that appellant was totally disabled from work commencing April 3, 2017. He attributed her disability to her need for a total knee replacement, and further opined that this surgery was 100 percent due to the work-related fall that she sustained on August 17, 2016.

Appellant completed a May 18, 2017 narrative statement and asserted that, following her return to work on February 22, 2017, her right knee was swollen and painful. She recounted that, in her backyard the weekend of March 17, 2017, her right knee buckled, and she fell.

In a May 22, 2017 note, Dr. Garfinkel evaluated appellant with respect to the August 17, 2016 work injury, repeated his diagnoses, and recommended a right total knee arthroplasty. He found that she was totally disabled.

By decision dated June 21, 2017, OWCP denied appellant's disability claim, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period due to the accepted employment injury.

OWCP continued to receive medical evidence. In reports dated June 12 through November 13, 2017, Dr. Garfinkel repeated his diagnoses, and recommended right total knee arthroplasty.

On August 29, 2017 appellant requested reconsideration and submitted additional medical evidence.

In a July 19, 2017 report, Dr. Buffman discussed the March 2017 fall at home and noted that, prior to this incident, Dr. Garfinkel had opined that she required total knee surgery.

On September 7, 2017 appellant filed a recurrence claim (Form CA-2a) alleging that in March 2017 her right knee buckled due to her accepted August 17, 2016 employment injury causing her to fall in her backyard. She thereafter stopped work. OWCP declined to adjudicate this claim on September 15, 2017, noting that appellant was receiving continuing medical treatment and that her claim for disability had been denied.

By decision dated November 27, 2017, OWCP denied modification of its June 21, 2017 decision.

After extensive development and additional requests for reconsideration, by merit decisions dated February 7, 2019 and April 27, 2020, OWCP continued to deny appellant's claim for disability from work commencing March 18, 2017, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period due to the accepted employment injury.

OWCP continued to receive new evidence. In a July 22, 2019 report, Dr. Karzel described appellant's history of injury and medical history. Following physical examination, he diagnosed severe degenerative arthritis, lateral compartment, right knee; patellofemoral chondromalacia, right knee; ACL tear, right knee; and status post right knee arthroscopy. Dr. Karzel recommended a total right knee arthroplasty.

On November 23, 2021 Dr. Garfinkel noted the August 17, 2016 employment injury and diagnosed unilateral primary osteoarthritis of the right knee. He opined that appellant required a right total knee arthroplasty. Dr. Garfinkel concluded that there were no other injuries post August 17, 2016 that attributed to causation.

On August 17, 2022 appellant, through counsel, requested reconsideration, and provided additional evidence and argument. Counsel asserted that, because appellant's right knee claims were not administratively combined until April 27, 2020, the DMA had not reviewed all relevant medical records and accepted claims. She further contended that the March 2017 fall at home was not an intervening cause, but a consequential injury, and that OWCP failed to properly develop her recurrence claim.

In support of reconsideration, appellant submitted a February 21, 2018 report wherein Dr. Shahin A. Sadik, a physician Board-certified in pain medicine, reviewed the medical records, and noted that there were two descriptions of how the March 2017 fall occurred. Dr. Sadik

found that, even if appellant had sustained an intervening injury, the need for right total knee arthroplasty preexisted March 2017 and should not be denied. He further opined that in either case appellant injured her right knee at home because it was unstable and painful. Dr. Sadik concluded that the fall she experienced at home was an extension of her previous injury on August 17, 2016.

By decision dated August 25, 2022, OWCP denied appellant's request for reconsideration, finding that it was untimely and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a request for reconsideration must be received by OWCP within one-year of the date of OWCP's decision for which review is sought.⁴ Timeliness is determined by the document receipt date of the request for reconsideration as is indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS).⁵ The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the discretionary authority granted OWCP under section 8128(a) of FECA.⁶

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 of error by OWCP.⁷ OWCP's regulations and 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(a), if the claimant's request for reconsideration demonstrates clear evidence of error on the part of OWCP.⁸

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue decided by OWCP. The evidence must be positive, precise, and explicit, and it must manifest on its face that OWCP committed an error.⁹ Evidence that does not raise a substantial question as to the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹⁰ 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 the evidence previously of

⁴ 20 C.F.R. § 10.607(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁶ *G.L.*, Docket No. 18-0852 (issued January 14, 2020).

⁷ 20 C.F.R. § 10.607(b); *T.C.*, Docket No. 19-1709 (issued June 5, 2020); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁸ *Id.* See also *supra* note 5 at Chapter 2.1602.5a (September 2020).

⁹ 20 C.F.R. § 10.607(b); *B.W.*, Docket No. 19-0626 (issued March 4, 2020); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

¹⁰ *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

¹¹ See *G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

record and whether the new evidence demonstrates clear error on the part of OWCP.¹² The Board makes an independent determination as to 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.¹³

OWCP's procedures further provide that the term clear evidence of error is intended to represent a difficult standard.¹⁴ The claimant must present evidence that on its face shows that OWCP made an error. Evidence such as a detailed, well-rationalized medical report that, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.¹⁵

ANALYSIS

The Board finds that OWCP properly denied that 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 on April 27, 2020. As the most recent request for reconsideration was not received by OWCP until August 17, 2022, more than the one-year time limitation, pursuant to 20 C.F.R. § 10.607(a), the Board finds that the request for reconsideration was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in denying the claim.¹⁶

The Board further finds that appellant has not demonstrated clear evidence of error. The underlying issue is whether OWCP properly denied her claim for wage-loss compensation for disability from work commencing March 18, 2017 due to her accepted employment injuries.

Counsel contended that OWCP erred in denying appellant's disability claim because it failed to fully develop her claim for authorization of right total knee replacement as appellant's right knee claims were not administratively combined until April 27, 2020, such that the DMA had not reviewed all relevant medical records and accepted claims. She further contended that the March 2017 fall at home was not an intervening cause, but a consequential injury, and that OWCP failed to properly develop her recurrence claim. These arguments, however, are irrelevant to the underlying issue of disability commencing March 18, 2017. Counsel, therefore, has not shown error in this regard.

¹² *Id.*

¹³ *Id.*

¹⁴ *R.K.*, Docket No. 19-1474 (issued March 3, 2020); *see also* 20 C.F.R. § 10.607(b); *supra* note 5 at Chapter 2.1602.5 (September 2020).

¹⁵ *W.B.*, Docket No. 20-1197 (issued February 3, 2021); *A.R.*, Docket No. 15-1598 (issued December 7, 2015); *Robert G. Burns*, *supra* note 10.

¹⁶ 20 C.F.R. § 10.607(b); *J.L.*, Docket No. 23-1110 (issued March 24, 2024); *T.P.*, Docket No. 22-0863 (issued November 8, 2022); *R.P.*, Docket No. 22-0686 (issued September 30, 2022); *J.F.*, Docket No. 22-0572 (issued September 20, 2022); *S.M.*, Docket No. 16-0270 (issued April 26, 2016).

In his February 21, 2018 report, Dr. Sadik, addressed how her March 2017 fall occurred and the need for right total knee arthroplasty. He concluded that the fall she experienced at home was an extension of her previous injury on August 17, 2016. However, Dr. Sadik's report is irrelevant as it does not address the underlying issue of disability commencing March 18, 2017 causally related to the accepted employment injury. As such, his report does not establish that OWCP committed error in the April 27, 2020 decision.¹⁷

None of the arguments or evidence submitted manifest on their face that OWCP committed an error in denying appellant's claimed period of disability, or are of sufficient probative value to raise a substantial question as to the correctness of OWCP's April 27, 2020 decision.¹⁸ Thus, she has not demonstrated clear evidence of error.¹⁹

Accordingly, 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.

CONCLUSION

The Board finds that OWCP properly 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.

¹⁷ *F.D.*, Docket No. 24-0145 (issued April 16, 2024); *L.B.*, Docket No. 19-0635 (issued August 23, 2019); *V.G.*, Docket No. 19-0038 (issued June 18, 2019); *C.V.*, Docket No. 18-0751 (issued February 22, 2019); *Leon J. Modrowski*, 55 ECAB 196 (2004); *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

¹⁸ *J.L.*, *supra* note 16; *R.H.*, Docket No. 22-0547 (issued October 14, 2022). *See also L.G.*, Docket No. 20-1457 (issued August 4, 2021); *W.R.*, Docket No. 18-1042 (issued February 12, 2019).

¹⁹ *J.L.*, *supra* note 16; *J.B.*, Docket No. 20-0630 (issued April 21, 2021).

ORDER

IT IS HEREBY ORDERED THAT the August 25, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board