

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim because it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On December 29, 2017 appellant, then a 64-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 12, 2017 she twisted her left knee while in the performance of duty. She explained that she ran into a patient's room to prevent him from falling and slipped on a liquid substance on the floor, that her right leg went outward, and that her left leg buckled beneath her. On the reverse side of the claim form, the employing establishment controverted the claim contending that there was no medical evidence to support a work-related injury.

In an encounter note dated December 22, 2017, Dr. Eric D. Parks, a Board-certified family practitioner and sports medicine specialist, noted that appellant complained of severe left knee pain of 11 days' duration. The note indicated that appellant sustained a work-related injury on December 11, 2017 when she slipped on a wet substance and fell in a patient's room. Dr. Parks diagnosed a left knee sprain. He indicated that, based on the mechanism of injury and his examination findings, he was concerned that appellant sustained an acute medial meniscus tear. Dr. Parks recommended sedentary work until she was cleared by an orthopedist.

In a January 12, 2018 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and afforded her 30 days to submit the requested information.

OWCP received additional evidence. In a December 12, 2017 work excuse note, Dr. Bita Mansouri, a Board-certified family practitioner, restricted appellant's lifting to a maximum of 25 pounds.

In a follow-up December 27, 2017 note, Dr. Parks recommended that appellant not lift, twist her knee, bend, squat, or walk more than 15 minutes at a time. He again recommended sedentary duty.

On December 29, 2017 appellant accepted a limited-duty assignment.

³ Docket No. 19-0756 (issued August 15, 2019), *denying petition for recon.*, Docket No. 19-0756 (issued April 10, 2023).

In early January 2018, Dr. Parks continued to recommend that appellant remain on sedentary duty. The employing establishment offered her another limited-duty assignment, which she accepted on January 8, 2018.

By decision dated February 14, 2018, OWCP denied appellant's traumatic injury claim, finding that she had not established that her diagnosed condition was causally related to the accepted December 12, 2017 employment incident.

On March 7, 2018 OWCP received a March 5, 2018 order form for a magnetic resonance imaging (MRI) scan of the cervical spine, and a narrative report of even date from Dr. Linda F. Gooch, Board-certified family medicine physician, who discussed appellant's head, neck, and upper extremity complaints.

On January 7, 2019 appellant, through counsel, requested reconsideration of the February 14, 2018 decision.

By decision dated January 22, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By decision dated August 15, 2019, the Board affirmed OWCP's January 22, 2019 nonmerit decision.

OWCP received additional evidence. In a surgery order dated April 3, 2018, Dr. John M. Solic, a Board-certified orthopedic surgeon, diagnosed left anterior cruciate ligament (ACL) rupture and ordered a left ACL arthroscopic assisted reconstruction with autograft. In a May 15, 2018 note, he diagnosed ACL rupture and opined that appellant fell at work on December 12, 2017 and sustained an acute ACL tear. Dr. Solic indicated that she required surgical intervention due to her fall and opined that this condition was not preexisting, but rather was definitely related to the work injury.

In a June 18, 2019 form report, Dr. Solic checked a box "Yes" indicating that the ACL surgery was causally related to the accepted December 12, 2017 employment incident. He advised that appellant reached maximum medical improvement on February 27, 2019. Dr. Solic opined that she sustained eight percent permanent impairment. He noted permanent limitations of knee stiffness, post-traumatic arthritis, and subjective weakness. Dr. Solic recommended limited prolonged standing, squatting, and kneeling.

On May 10, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review of OWCP's February 14, 2018 merit decision. She resubmitted Dr. Solic's June 18, 2019 report.

By decision dated June 7, 2023, OWCP denied appellant's request for an oral hearing on the grounds that she was not entitled to a hearing as a matter of right because she had previously requested reconsideration. It exercised its discretion and further determined that the issue in the case could equally well be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which established that she sustained an injury causally related to her federal employment.

On June 12, 2023 appellant, through counsel, requested reconsideration resubmitted Dr. Solic's June 18, 2019 report.⁴

By decision dated June 14, 2023, OWCP denied appellant's June 12, 2023 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.⁵ 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.⁶ Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS).⁷ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁸

OWCP may not deny a reconsideration request solely because it was untimely filed. When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error.⁹ If a request demonstrates clear evidence of error, OWCP will reopen the case for merit review.¹⁰

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by OWCP. The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence that 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 to merely 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

⁴ The Board notes that counsel's reconsideration request indicated that it was a request for reconsideration of OWCP's June 7, 2023 denial of hearing. However, the appeal rights attached to that decision did not include a request for reconsideration. Therefore, the proper decision over which counsel could request reconsideration was OWCP's February 14, 2018 merit decision.

⁵ 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).

⁶ 20 C.F.R. § 10.607(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁸ *R.L.*, Docket No. 18-0496 (issued January 9, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁹ *See* 20 C.F.R. § 10.607(b); *G.G.*, Docket No. 18-1074 (issued January 7, 2019); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

¹⁰ *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *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).

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.¹¹

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard and the claimant must present evidence, which on its face shows that OWCP made an error.¹² 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.¹³ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁴

ANALYSIS

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.

OWCP's regulations¹⁵ and procedures¹⁶ establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.¹⁷ The most recent merit decision was OWCP's February 14, 2018 decision, which denied appellant's claim for a traumatic injury because, she failed to establish that her left knee sprain was causally related to the accepted December 12, 2017 employment incident. As OWCP did not receive her request for reconsideration until June 12, 2023, more than one year after the February 14, 2018 decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in denying her claim.

In support of her untimely reconsideration request, appellant submitted evidence, including an April 3, 2018 report wherein Dr. Solic diagnosed ACL rupture and ordered left ACL arthroscopic-assisted reconstruction with autograft. In a May 15, 2018 report, Dr. Solic diagnosed ACL rupture and opined that she fell at work on December 12, 2017 and sustained an acute ACL tear. He noted that appellant required surgical intervention due to her fall and opined that this condition was not preexisting, but rather was definitely related to the work injury. Appellant also submitted a June 18, 2019 form report wherein Dr. Solic discussed permanent impairment and

¹¹ *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

¹² *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 7 at Chapter 2.1602.5a (September 2020).

¹³ *Id.*

¹⁴ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹⁵ 20 C.F.R. § 10.607(a); *see F.N.*, Docket No. 18-1543 (issued March 6, 2019); *Alberta Dukes*, 56 ECAB 247 (2005).

¹⁶ *Supra* note 7 at Chapter 2.1602.4 (February 2016); *see L.A.*, Docket No. 19-0471 (issued October 29, 2019); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

¹⁷ 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

work restrictions, and checked a box “Yes” indicating that the ACL surgery was causally related to the December 12, 2017 employment incident.

The Board finds that this evidence does not raise a substantial question as to the correctness of OWCP’s February 14, 2018 merit decision.¹⁸ As noted above, the term clear evidence of error is intended to represent a difficult standard and the submitted evidence does not show in its face that OWCP made an error when it denied appellant’s traumatic injury claim.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.

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2023 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: May 6, 2024
Washington, DC

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

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

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

¹⁸ See *T.C.*, Docket No. 19-1709 (issued June 5, 2020); *B.W.*, Docket No. 19-0626 (issued March 4, 2020).

¹⁹ See *supra* note 13.