

**United States Department of Labor
Employees' Compensation Appeals Board**

I.D., Appellant)	
)	
and)	Docket No. 25-0021
)	Issued: November 20, 2024
U.S. POSTAL SERVICE, RANCHO SANTA)	
MARGARITA POST OFFICE,)	
Rancho Santa Margarita, CA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 11, 2024 appellant filed a timely appeal from an August 1, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated July 21, 2023, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 10, 2021 appellant, then a 60-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a knee condition due to factors of his federal employment. He explained that a collection box fell on his knee and caused immediate pain and further noted that his claim was delayed by the prior postmaster as he had informed his supervisor of the injury on the same day he was injured. Appellant noted that he first became aware of his condition and realized its relation to his federal employment on March 27, 2019. He stopped work on March 30, 2021.

On April 6, 2021 Dr. Jay J. Patel, a Board-certified orthopedic surgeon, related that appellant presented with severe progressive right knee pain over the past year, which was making it difficult for him to enter and exit his truck and ascend and descend stairs. He further related that he had difficulty walking and could only do so indoors. Dr. Patel diagnosed severe right knee varus degenerative joint disease (DJD) by way of x-ray examination. He recommended a total knee arthroplasty.

A form report dated June 1, 2021 from Dr. Patel indicated that appellant was in temporary total disability status, effective June 1 through October 1, 2021.

In a development letter dated June 17, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

Thereafter, OWCP received an unsigned medical report dated April 3, 2019 relating that appellant had been experiencing knee pain since the prior summer, when a mailbox door fell on his knee.

Appellant submitted various return-to-work notes dated November 20, 2020 through March 11, 2021 from Dr. Neal M. Damian, a chiropractor, providing work restrictions of no heavy lifting or going up and down stairs due to knee pain.

In a medical report dated June 1, 2021, Dr. Damian noted that appellant had been receiving chiropractic treatment for his medical condition since November 4, 2020 for low back and right knee pain. He related that appellant's work duties required him to lift boxes, walk, and climb up and down stairs. Dr. Damian noted that a magnetic resonance imaging (MRI) scan revealed a meniscal tear of the right knee and discopathy of the lumbar spine. He opined that appellant's

² Docket No. 22-0848 (issued September 2, 2022).

injuries were caused or aggravated by his employment factors, including prolonged walking for eight hours or more, bending, climbing stairs, and lifting boxes.

A medical note dated June 28, 2021 from Dr. Patel indicated that appellant was scheduled to undergo right total knee arthroplasty that day and would be off work for up to three months or until an estimated return date of October 1, 2021.

In a medical report dated July 1, 2021, Dr. Damian detailed the results of right knee and lumbar MRI scans and opined that appellant's medical conditions were caused or aggravated by his work duties.

By decision dated August 2, 2021, OWCP denied appellant's claim, finding that he was not injured in the performance of duty as the implicated factors of employment were not established. It, therefore, concluded that he had not established an injury and/or a medical condition that arose during the course of employment and within the scope of compensable work factors as defined under FECA.

On October 20, 2021 appellant requested reconsideration of OWCP's August 2, 2021 decision and submitted additional evidence. In a medical report dated June 28, 2021, Dr. Patel noted that appellant underwent surgery for right knee DJD. He indicated that a postoperative impression revealed severe osteoarthritis of the knee.

A medical note dated September 10, 2021 from Dr. Damian related that appellant continued to experience severe pain and tenderness of the right knee and joints. Dr. Damian opined that the initial incident of a mailbox hitting his right knee and the continuous use of his right knee as a federal employee caused his knee condition. He further noted that continued work duties would aggravate his symptoms and cause inflammation.

On September 21, 2022 appellant was seen by Dr. Patel for a postoperative examination. Dr. Patel related that, following the surgery, appellant experienced minimal knee pain with occasional stiffness and swelling. He noted that appellant would be off work through April 1, 2022 as he was unable to stand or walk for prolonged periods of time.

By decision dated November 15, 2021, OWCP modified its prior decision to find that appellant had established performance of duty. However, appellant's claim remained denied as the medical evidence of record was insufficient to establish a knee condition causally related to the accepted factors of his federal employment.

On January 24, 2022, appellant requested reconsideration and submitted additional medical evidence.

In a December 14, 2021 report, Dr. Patel noted his examination of appellant five months post-knee arthroplasty. He noted that the right knee had moderate swelling and that x-rays revealed stable alignment and fixation without fracture, dislocation, loosening, or wear. Dr. Patel indicated that appellant could return to work in April, with continued physical therapy and pain medication. In a January 5, 2022 note, he related that appellant was seen on April 6, 2021 for severe right knee

pain following a work-related incident where a mailbox fell onto his knee. Dr. Patel noted a diagnosis of a meniscus tear, and that appellant underwent surgery for a partial knee replacement on June 28, 2021.

By decision dated April 22, 2022, OWCP denied modification of its prior decision.

Appellant appealed to the Board. By decision dated September 2, 2022, the Board affirmed OWCP's April 22, 2022 decision.³

On April 27, 2022 appellant, through her representative, requested reconsideration.

Appellant submitted a December 7, 2022 report, wherein Dr. Joan Sy, an osteopath, diagnosed right knee meniscal tear, right knee severe medial compartment osteoarthritis, and lumbar discopathy. Dr. Sy noted that his pain began after sustaining a trauma at work and was repeatedly aggravated by his repetitive heavy manual work duties. She opined that the level of right knee internal derangement and osteoarthritis was likely due to work-induced repetitive trauma.

By decision dated July 21, 2023, OWCP denied modification of the September 9, 2022 decision.

On July 23, 2024 appellant requested reconsideration. Appellant contended that he had submitted a medical report in January 2024, but he did not receive a response from OWCP. He indicated that his case continued to be denied although he provided his supervisor's report and reports from his physicians finding that his injury occurred on the job.

In support thereof, appellant submitted a July 1, 2021 report, wherein Dr. Damian diagnosed right knee meniscal tear, lumbar discopathy, lumbar intersegmental dysfunction, and muscle spasm. Dr. Damian opined that the initial incident of a mailbox hitting appellant's right knee and the continuous use of his right knee as a federal employee caused his knee condition. He further noted that continued work duties would aggravate his symptoms and cause inflammation.

Dr. Patel treated appellant on December 14, 2021 and noted he was five months' status post right total knee arthroplasty and was experiencing significant pain and disability. He returned appellant to work in April 2021. Appellant also submitted a report dated January 5, 2022 previously of record.

In another note dated December 7, 2022, Dr. Sy treated appellant for injuries that occurred from trauma sustained at work and aggravated by chronic repetitive work duties. She opined that appellant's current medical status was the result of work-induced trauma.

On January 9, 2024 Dr. Iwan Nyotowidjojo, a Board-certified internist, treated appellant for injuries that occurred from trauma at work and aggravated by chronic repetitive work duties. He opined that appellant's current medical status was due to work-induced trauma.

³ *Id.*

By decision dated August 1, 2024, OWCP denied appellant's July 23, 2024 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.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 of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS).⁶ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁷

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.⁸ If a request demonstrates clear evidence of error, OWCP will reopen the case for merit review.⁹

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 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.¹⁰

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.¹¹ Evidence such as a detailed, well-rationalized medical report which, if submitted

⁴ 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).

⁵ 20 C.F.R. § 10.607(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁷ *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).

⁸ *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).

⁹ *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 6 at Chapter 2.1602.5 (September 2020).

¹⁰ *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

¹¹ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 6 at Chapter 2.1602.5a (September 2020).

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 of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

OWCP's regulations¹⁴ and procedures¹⁵ 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.¹⁶ The most recent merit decision was OWCP's July 21, 2023 decision, which denied modification of the September 9, 2022 decision because the medical evidence of record was insufficient to establish that appellant's knee injury was causally related to the accepted factors of his federal employment. As OWCP did not receive his request for reconsideration until July 23, 2024, more than one year after the July 21, 2023 decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in denying his claim.

In support of his untimely reconsideration request, appellant submitted evidence, including a July 1, 2021 report from Dr. Damian who opined that the initial incident of a mailbox hitting appellant's right knee and the continuous use of his right knee as a federal employee caused his knee condition. He opined that continued work duties would aggravate his symptoms and cause inflammation. Section 8101(2) of FECA provides that chiropractors are considered physicians "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."¹⁷ Thus, where x-rays do not demonstrate a subluxation (a diagnosis of a subluxation based on x-rays has not been made), a chiropractor is not considered a "physician," and his or her reports cannot be considered as competent medical evidence under FECA.¹⁸

¹² *Id.*

¹³ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

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

¹⁵ *Supra* note 6 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).

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

¹⁷ 5 U.S.C. § 8101(2); *see also* section 10.311 of the implementing federal regulations provides: "(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. OWCP will not necessarily require submittal of the x-ray, or a report of the x-ray, but the report must be available for submittal on request."

¹⁸ *See Susan M. Herman*, 35 ECAB 669 (1984).

Dr. Damian is not a physician as he did not diagnose a spinal subluxation demonstrated by x-ray. Furthermore, appellant's knee injury does not pertain to the spine. The Board has held that a chiropractor may only qualify as a physician in the diagnosis and treatment of spinal subluxation, his or her opinion is not considered competent medical evidence in evaluation of other disorders, including those of the extremities, although these disorders may originate in the spine.¹⁹ Thus, Dr. Damian's opinion is not considered competent medical evidence under FECA. He did not sufficiently explain how this evidence raised a substantial question as to the correctness of OWCP's July 21, 2023 merit decision.²⁰

Appellant also submitted reports from Dr. Patel dated December 14, 2021 and January 5, 2022²¹ who noted appellant was five months status post right total knee arthroplasty and was experiencing significant pain and disability. On December 7, 2022 and January 9, 2024 Drs. Sy and Nyotowidjojo treated appellant for injuries that occurred from trauma sustained during work and aggravated by chronic repetitive work duties. They opined that appellant's current medical status was due to work-induced trauma. None of the evidence manifests on its face that OWCP committed an error in denying appellant's claim for an occupational disease. Thus, the evidence is insufficient to demonstrate clear evidence of error.²²

The Board finds that this evidence does not raise a substantial question as to the correctness of OWCP's July 21, 2023 merit decision.²³ 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 occupational disease claim.²⁴

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 his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

¹⁹ *Pamela K. Guesford*, 53 ECAB 726 (2002).

²⁰ *T.C.*, Docket No. 19-1709 (issued June 5, 2020); *B.W.*, Docket No. 19-0626 (issued March 4, 2020).

²¹ The Board notes that the January 5, 2022 report from Dr. Patel was previously of record. This evidence is insufficient to raise a substantial question as to the correctness of OWCP's decision and is insufficient to discharge his burden of proof; *see E.T.*, Docket No. 20-1651 (issued May 6, 2021); *D.L.*, Docket No. 18-1112 (issued January 17, 2020).

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

²³ *See T.C.*, Docket No. 19-1709 (issued June 5, 2020); *B.W.*, Docket No. 19-0626 (issued March 4, 2020).

²⁴ *See supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 2024
Washington, DC

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

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

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