

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

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G.R., Appellant)	
)	
and)	Docket No. 25-0041
)	Issued: November 25, 2024
U.S. POSTAL SERVICE, WEST PALM BEACH)	
PROCESSING & DISTRIBUTION CENTER,)	
West Palm Beach, FL, Employer)	
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Appearances:
Christina Berrios, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 16, 2024 appellant, through her representative, filed a timely appeal from a September 30, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated August 24, 2021 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

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

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

On July 2, 2020 appellant, then a 50-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 4, 2020 she sprained her right knee when she slipped and fell on a wet bathroom floor while in the performance of duty.⁴

In a hospital emergency department report dated June 4, 2020, Dr. Julie Scarpino, an emergency medicine physician, indicated that appellant presented after she slipped and fell at work and landed on her right hip. On physical examination, she observed right hip tenderness at the greater trochanter, decreased range of motion (ROM) of the right knee, and right knee edema with pain. Dr. Scarpino diagnosed knee pain. An after-visit summary report and discharge instructions sheet indicated that appellant was treated in the emergency room for right knee pain and discharged with the diagnosis of right knee pain.

In reports dated June 11 through September 17, 2020, Dr. Graham Whitfield, a Board-certified orthopedic surgeon, described the June 4, 2020 employment incident and noted appellant's complaints of bilateral knee pain, lower back pain with muscle spasm, left ankle pain, and left shoulder pain. He provided physical examination findings and diagnosed right knee arthralgia with chondromalacia patella, left knee arthralgia with chondromalacia patella, lumbosacral sprain, and left ankle arthralgia. Dr. Whitfield completed duty status reports (Form CA-17), and work restriction notes dated June 11 and August 13, 2020, which indicated that appellant was unable to work.

In a letter dated September 29, 2020, appellant's representative contended that on June 4, 2020 appellant sustained a traumatic injury when she slipped and fell in the bathroom. She noted that appellant was evaluated in the emergency room and had follow-up appointments with

³ *Order Remanding Case*, Docket No. 24-0781 (issued August 26, 2024); Docket No. 23-1005 (issued February 15, 2024).

⁴ OWCP assigned the present claim OWCP File No. xxxxxx275. Appellant has a previously accepted traumatic injury claim under OWCP File No. xxxxxx451, for left knee derangement, bilateral knee contusion, left leg sprain, open wound of the hip and thigh without complications, and left ankle contusion causally related to a March 15, 2012 employment incident. She also previously filed an occupational disease claim (Form CA-2) under OWCP File No. xxxxxx443 on November 29, 2017 alleging that she sustained bilateral knee conditions due to factors of her federal employment. OWCP has administratively combined OWCP File Nos. xxxxxx275, xxxxxx451, and xxxxxx443 with OWCP File No. xxxxxx451 serving as the master file.

Dr. Whitfield. Appellant's representative indicated that appellant had been unable to perform her job duties since her date of injury.

In an April 23, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a May 11, 2021 response to OWCP's development letter, appellant indicated that she slipped and fell on her right knee in the restroom on June 4, 2020. She noted that she immediately experienced bruising and swelling in her right knee and reported it to her supervisor.

By decision dated June 8, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the June 4, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On June 30, 2021 appellant, through her representative, requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received additional evidence. In a May 20, 2021 report, Dr. Whitfield related appellant's complaints of lower back pain with muscle spasm and lower extremity symptoms, and right knee pain. He noted appellant's physical examination findings of tenderness to palpation in the lumbar spine and decreased sensation in the left lower extremity. Examination of the right knee revealed tenderness to palpation in the anterolateral and anteromedial joint lines. Dr. Whitfield diagnosed right knee arthralgia with chondromalacia patella, pes anserinus bursitis, patellar tendinitis, hamstring tendinitis, and lumbosacral sprain.

In a report dated May 31, 2021, Dr. Whitfield indicated that he was responding to OWCP's development letter. He provided dates of appellant's examinations and modalities of treatment, and referred to his June 11, 2020 report for physical examination findings and diagnosis. Dr. Whitfield opined that it was "clear that within reasonable medical probability [appellant] sustained injuries to her right knee at work [June 4, 2020]."

By decision dated August 24, 2021, OWCP's hearing representative modified the June 8, 2021 decision to find that appellant had established a medical diagnosis in connection with the accepted June 4, 2020 employment incident. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted June 4, 2020 employment incident.

On August 29, 2022 appellant, through her representative, requested reconsideration. The representative indicated that appellant immediately reported her injury to her supervisor and was provided with a Form CA-16 to take to the emergency room for treatment. Appellant alleged that Dr. Whitfield, her treating physician, had responded to OWCP's request for additional information and his response clearly met the criteria for causal relationship.

Appellant submitted additional evidence, including an August 15, 2022 report from Dr. Whitfield. In this report, Dr. Whitfield recounted that his medical note of June 11, 2020 clearly

delineated the details of appellant's right knee injury, in addition a physical examination was performed, and a diagnosis was made. He concluded that there was unequivocal evidence to demonstrate that appellant sustained injuries to her right knee on June 4, 2020 while at work.

OWCP also received reports from Dr. Whitfield previously of record.

By decision dated March 3, 2023, OWCP summarily denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

Appellant appealed to the Board. By decision dated February 15, 2024, the Board set aside OWCP's March 3, 2023 decision, and remanded the case to OWCP to make findings of fact and provide a clear statement of reasons explaining the basis for the decision.

By decision dated April 19, 2024, OWCP denied appellant's August 29, 2022 request for reconsideration, finding that it was untimely filed, and failed to demonstrate clear evidence of error.

On July 22, 2024 appellant, through her representative, appealed to the Board. By order dated August 26, 2024,⁵ the Board found that OWCP failed to consider the August 15, 2022 report from Dr. Whitfield. The Board set aside OWCP's April 19, 2024 decision and remanded the case for a review of all the evidence of record, to be followed by an appropriate decision.

By decision dated September 30, 2024, OWCP again denied appellant's reconsideration request, 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.⁶ OWCP's regulations⁷ establish a one-year time limitation for requesting reconsideration which begins on the date of the original OWCP merit decision. A right to reconsideration within one-year also accompanies any subsequent merit decision on the issues.⁸ 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. Timeliness is determined by the document receipt date (*i.e.*, the "received date" in

⁵ *Supra* note 3.

⁶ 5 U.S.C. § 8128(a); *B.J.*, Docket No. 24-0430 (issued June 5, 2024); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁷ 20 C.F.R. § 10.607(a).

⁸ *B.J.*, *supra* note 6; *E.R.*, Docket No. 21-0423 (issued June 20, 2023); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert F. Stone*, 57 ECAB 292 (2005).

OWCP's Integrated Federal Employees' Compensation System (iFECS).⁹ Imposition of this one-year filing limitation does not constitute an abuse of discretion.¹⁰

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.¹¹ 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.¹²

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹³ The evidence must be positive, precise, and explicit and 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.¹⁴

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁵ The claimant must present evidence which on its face demonstrates that OWCP made an error. 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.¹⁶ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁷

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

¹⁰ *B.J.*, *supra* note 6; *S.S.*, Docket No. 23-0086 (issued May 26, 2023); *G.G.*, Docket No. 18-1074 (issued January 7, 2019). *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

¹¹ *See* 20 C.F.R. § 10.607(b); *B.J.*, *id.*; *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

¹² *B.J.*, *id.*; *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 9 at Chapter 2.1602.5 (September 2020).

¹³ *B.J.*, *id.*; *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 9 at Chapter 2.1602.5a (September 2020).

¹⁴ *B.J.*, *id.*; *L.J.*, Docket No. 23-0282 (issued May 26, 2023); *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁵ *B.J.*, *id.*; *G.G.*, *supra* note 10; *see also* 20 C.F.R. § 10.607(b); *supra* note 9 at Chapter 2.1602.5 (September 2020).

¹⁶ *B.J.*, *id.*; *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *id.* at Chapter 2.1602.5a (September 2020).

¹⁷ *B.J.*, *id.*; *G.B.*, Docket No. 19-1762 (issued March 10, 2020); *D.S.*, Docket No. 17-0407 (issued May 24, 2017); *George C. Vernon*, 54 ECAB 319 (2003).

ANALYSIS

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.

In prior appeals, the Board determined that appellant's August 29, 2022 request for reconsideration was untimely as it was received more than one year after the August 24, 2021 decision. Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.¹⁸ Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in denying the claim.¹⁹

The Board further finds that the evidence of record is insufficient to demonstrate clear evidence of error on the part of OWCP in its decision. In support of her untimely reconsideration request, appellant's representative argued that Dr. Whitfield's response to OWCP's request for additional information was sufficient to establish causal relationship. The Board notes that OWCP, in its August 24, 2021 decision, found that Dr. Whitfield's reports contained insufficient rationale explaining how the diagnosed condition was causally related to the accepted June 4, 2020 employment incident. This argument does not demonstrate that OWCP erred in the issuance of its August 24, 2021 merit decision.

On reconsideration appellant resubmitted treatment notes and reports from Dr. Whitfield previously reviewed by OWCP. Appellant also submitted an August 15, 2022 report from Dr. Whitfield. The Board finds that this report from Dr. Whitfield did not raise a substantial question concerning the correctness of OWCP's hearing representative's August 28, 2021 decision. The report did not demonstrate that OWCP improperly concluded in its August 28, 2021 decision that appellant failed to establish causal relationship between the diagnosed knee condition and the accepted employment incident.²⁰ 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.²¹ The Board has held that it is not enough to show that evidence could be construed so as to produce a contrary conclusion.²² Thus, this evidence is insufficient to demonstrate clear evidence of error.

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.

¹⁸ *E.W.*, Docket No. 24-0714 (issued August 30, 2024); *H.H.*, Docket No. 21-1137 (issued January 26, 2023); *S.M.*, Docket No. 18-1195 (issued January 6, 2020); *J.L.*, Docket No. 17-1460 (issued December 21, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

¹⁹ 20 C.F.R. § 10.607(b); *H.H.*, *id.*; *S.C.*, Docket No. 20-1537 (issued April 14, 2021); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *see Debra McDavid*, 57 ECAB 149 (2005).

²⁰ *S.T.*, Docket No. 22-1019 (issued April 10, 2023).

²¹ *D.P.*, Docket No. 24-0848 (issued September 23, 2024); *M.E.*, Docket No. 18-1442 (issued April 22, 2019).

²² *J.M.*, Docket No. 23-0603 (issued September 27, 2023); *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 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 25, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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