

FACTUAL HISTORY

On March 10, 2021 appellant, then a 57-year-old correctional institute administrator, filed an occupational disease claim (Form CA-2) alleging that she sustained conditions of the right knee, leg, hip, and lower back causally related to factors of her federal employment, including excessive sitting, pushing back and forth in a chair, and standing up from a chair. She noted that she first became aware of her condition and its relationship to her federal employment on September 15, 2019. On the reverse side of the claim form, a supervisor noted that appellant had retired as of August 31, 2020.

In a development letter dated March 12, 2021, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed. OWCP also provided appellant a questionnaire for completion regarding the factual elements of her claim. It afforded her 30 days to respond and submit additional evidence.

OWCP received a series of diagnostic tests dated March 29, 2021, including lumbar spine and right knee x-rays, and magnetic resonance imaging scans of the right knee, and lumbar spine.

In a report dated March 22, 2021, Dr. Juan Zamora, a family medicine specialist, noted that appellant was seen for low back and right knee pain, which had been present for six months. He diagnosed lumbosacral radiculopathy and strain of the muscles and tendons of the right lower leg. In a report dated April 13, 2021, Dr. Zamora diagnosed lumbosacral spondylosis with radiculopathy, lumbosacral intervertebral disc degeneration, chondromalacia of the right knee, a tear of the lateral meniscus of the right knee, and strain of the muscles and tendons of the posterior muscle group of the lower right leg. He opined that appellant's diagnoses were work related, noting that lifting of boxed files, extensive sitting, transitioning from sitting to standing, and repetitive bending and twisting had aggravated appellant's preexisting age-related degenerative conditions. Dr. Zamora stated that appellant's torn lateral meniscus was the direct result of her frequent bending of the knees to transition from sitting to standing, as well as heavy lifting, kneeling, and squatting.

On April 16, 2021 Dr. Tom Rubio, IV, a chiropractor, diagnosed lumbosacral spondylosis with radiculopathy, lumbar intervertebral disc degeneration, right knee chondromalacia, right knee lateral meniscus tear, lumbosacral radiculopathy, and strain of the muscles and tendons of the right lower leg.

By decision dated June 7, 2021, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish the factual basis of her claim, as she did not respond to OWCP's March 12, 2021 request to provide additional factual information about her claimed injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 28, 2021 appellant requested reconsideration. With her request, she submitted a November 15, 2020 statement, in which she attributed her right leg condition to use of a chair for up to eight hours per day in the performance of duties of clerical positions at the employing establishment. Appellant noted that she had worked in clerical positions for her entire career at the employing establishment from 1996 through August 2020, when she retired.

By decision dated March 15, 2022, OWCP found that the evidence of record was sufficient to establish the factual basis of her claim. However, the claim was denied as the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted factors of her federal employment.

Appellant submitted reports dated April 21 and June 18, 2021 from Dr. Gary Erier, a chiropractor. Dr. Erier assessed appellant's condition as lumbosacral spondylosis with radiculopathy, lumbosacral intervertebral disc degeneration, lumbosacral radiculopathy, right knee chondromalacia, right knee tear of the lateral meniscus, and strain of the muscles and tendon of the right lower leg.

Appellant also submitted MRI scans of the lumbar spine, right knee, and right hip obtained on March 6, 2024. The MRI scan of the lumbar spine demonstrated multifocal posterior interspinous ligament strain/sprain at L2-L3 and L3-L4, and posterior disc herniations at L3-L4, L4-L5, and L5-S1. The MRI scan of the right knee demonstrated anterior cruciate ligament sprain; mild tricompartmental osteoarthritis with mild suprapatellar joint effusion; grade 2 medial and lateral tibiofemoral compartment chondromalacia; and grade 4 chondromalacia of the patella with subchondral bone marrow edema at the lateral patella facet. The MRI scan of the right hip demonstrated osteoarthritis of the right hip joint characterized by superior chondral thinning and marginal acetabular osteophyte formation and tearing of the right superior and anterosuperior acetabular labrum.

In reports dated May 6, 2024, Dr. Antonio Rozier, Board-certified in physical medicine and rehabilitation, examined appellant for evaluation of her claimed work-related injury. He diagnosed sprain of the medial collateral ligament of the right knee; unilateral primary osteoarthritis of the right knee and right hip; a right hip labrum tear; intervertebral disc displacement of the lumbar and lumbosacral regions; sprain of ligaments of the lumbar spine; and inflammatory spondylopathy of the lumbar region. Dr. Rozier related how occupational disease musculoskeletal disease occurs due to biomechanical and physiological changes, and he cited medical literature. In his second report of even date, he opined that, within reasonable medical certainty, the duties of appellant's employment including eight hours of sitting with her right leg and knee rubbing against the seat of a chair, scooting her chair back and forth in her cubicle, and standing and sitting caused a small nodule to form on the posterior aspect of her knee with accompanied inflammation and a limp. Dr. Rozier noted that ambulation required her to slide forward in her chair, resulting in sitting on the front of the chair without support from the back. He opined that the act of sitting on the edge of the chair, with no back support and walking with a limp, eventually caused sharp sensations of the right hip, the back of the right leg, and the lower back. Dr. Rozier attributed the diagnosed conditions to appellant's work duties over 24 years of employment, noting that the symptoms related to her injuries were a result of repetitive use and accumulative trauma to her right knee, lumbar spine, and right hip.

On July 8, 2024 appellant again requested reconsideration.

By decision dated July 15, 2024, OWCP denied appellant's 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.³ 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.⁴ 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).⁵ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁶

OWCP may not deny a request for reconsideration 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.⁷ If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review.⁸

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by OWCP.⁹ The evidence must be positive, precise, and explicit, and must manifest on its face that OWCP committed an error.¹⁰ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹¹ This entails a limited review by OWCP of how the evidence submitted with the request for reconsideration bears on the evidence previously of record, and whether the new evidence demonstrates clear error on the part of OWCP.¹²

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹³ It is not enough merely to show that the evidence could be construed so as to

³ 5 U.S.C. § 8128(a); *see also* *A.B.*, Docket No. 19-1539 (issued January 27, 2020); *W.C.*, 59 ECAB 372 (2008).

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.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).

⁷ *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).

⁸ *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).

⁹ *A.A.*, Docket No. 19-1219 (issued December 10, 2019); *J.F.*, Docket No. 18-1802 (issued May 20, 2019); *J.D.*, Docket No. 16-1767 (issued January 12, 2017); *Dean D. Beets*, 43 ECAB 1153 (1992).

¹⁰ *J.D.*, Docket No. 19-1836 (issued April 6, 2020); *Leone N. Travis*, 43 ECAB 227 (1999).

¹¹ *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

¹² *T.N.*, Docket No. 18-1613 (issued April 29, 2020).

¹³ *See supra* note 5 at Chapter 2.1602.5a (September 2020); *see also* *K.W.*, Docket No. 19-1808 (issued April 2, 2020); *J.S.*, Docket No. 16-1240 (issued December 1, 2016).

produce a contrary conclusion. Even 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.¹⁴ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁵

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.

As explained above, a request for reconsideration must be received within one year of the date of the last merit decision for which review is sought.¹⁶ As appellant's request for reconsideration was not received by OWCP until July 8, 2024, more than one year after its March 15, 2022 merit decision denying her occupational disease claim, it was untimely filed.¹⁷ Consequently, she must demonstrate clear evidence of error by OWCP in its March 15, 2022 decision.¹⁸

On reconsideration, appellant submitted April 21 and June 18, 2021 reports from Dr. Erier and the results of x-rays of the lumbar spine, right knee, and right hip obtained on March 6, 2024. She also submitted May 6, 2024 reports from Dr. Rozier, in which he opined that the diagnosed conditions of the right knee, lumbar spine, and right hip were attributable to the performance of appellant's work duties over 24 years of employment, and noted that the symptoms related to her injuries were a result of repetitive use and accumulative trauma to her right knee, lumbar spine, and right hip. The Board notes that clear evidence of error is intended to represent a difficult standard.¹⁹ Further, as noted above, even 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.²⁰ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.²¹ It is not merely not enough to establish that the evidence could be construed so as to produce a contrary conclusion.²² The evidence appellant submitted with her untimely request for reconsideration does not establish on its face that OWCP's March 15, 2022 decision was issued in error.

¹⁴ *Id.*

¹⁵ *W.R.*, Docket No. 24-0244 (issued May 22, 2024); *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹⁶ *See supra* note 4.

¹⁷ *See id.*

¹⁸ *See supra* note 8.

¹⁹ *Supra* note 13; *see also E.R.*, Docket No. 24-0681 (issued July 29, 2024).

²⁰ *Supra* note 14.

²¹ *Supra* note 11.

²² *Supra* note 14.

Accordingly, the Board finds that the evidence submitted on reconsideration does not demonstrate clear evidence of error on the part of OWCP in its March 15, 2022 decision.

As appellant's request for reconsideration was untimely filed and failed to demonstrate clear evidence of error, the Board finds that OWCP properly denied her request for reconsideration.

CONCLUSION

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.

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board