



filing of this appeal, the Board lacks jurisdiction to review the merits of her claim pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.<sup>3</sup>

### **ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration as it was untimely filed and did not establish clear evidence of error.

### **FACTUAL HISTORY**

On July 23, 2007 appellant, then a 57-year-old information technology specialist, filed a traumatic injury claim alleging that on July 21, 2007 she injured her left knee, low back, and right upper arm when her left knee buckled and she fell backward on steps. She attributed her fall to a prior knee injury that had occurred on December 21, 2006. Appellant stopped work on July 22, 2007 and returned to work on August 21, 2007.

By decision dated February 21, 2008, OWCP denied appellant's claim as the medical evidence was insufficient to show that she sustained a diagnosed condition as a result of the accepted work incident.

Subsequent to OWCP's decision, appellant resubmitted a December 13, 2007 report from Dr. James E. Wood, Jr., a Board-certified orthopedic surgeon, who noted that appellant had two knee injuries as a result of falls at work, the first in December 2006 and the second on July 21, 2007 when her knee buckled and she fell backward. Dr. Wood diagnosed probable chondromalacia of the left knee and recommended arthroscopic surgery to treat the chondromalacia and to rule out internal derangement or a torn medial meniscus.

On January 30, 2008 Dr. Wood performed a debridement of the undersurface of the left patella. In a February 8, 2008 progress report, he noted that appellant was status post a left knee debridement for "severe patellofemoral arthritis." Dr. Wood released her to resume work on March 17, 2008.

On December 7, 2010 Dr. Wood again evaluated appellant for a December 6, 2010 injury to her left knee. On July 19, 2011 he diagnosed a left knee contusion and a mild aggravation of patellofemoral osteoarthritis following a July 13, 2011 fall.

On March 7, 2014 appellant requested reconsideration of the February 21, 2008 decision. She maintained that her supervisor violated FECA by refusing to process or sign a Form CA-7 in 2007. Appellant resubmitted a December 14, 2007 claim for compensation from July 21 to August 19, 2007. It was not signed by the employing establishment. Appellant also submitted a July 23, 2007 statement from a witness who described appellant's July 21, 2007 fall.

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> Appellant timely requested an oral argument pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion the Board, by order dated June 16, 2015, denied her request as her arguments on appeal could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 15-0250 (issued June 16, 2015).

By decision dated May 12, 2014, OWCP denied appellant's request for reconsideration as it was untimely and failed to demonstrate clear evidence of error. It determined that the evidence submitted and arguments raised did not show any error in its February 21, 2008 decision.

On appeal appellant contends that she experienced an injury in the performance of duty on July 21, 2007 which required surgery in 2008. She maintains that she is entitled to lost time from work, lost overtime, and medical expenses.

### **LEGAL PRECEDENT**

OWCP, through its regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a) of FECA.<sup>4</sup> One such limitation, 20 C.F.R. § 10.607 provides that an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.<sup>5</sup> OWCP will consider an untimely application only if the application demonstrates clear evidence of error on the part of OWCP in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.<sup>6</sup>

The term "clear evidence of error" is intended to represent a difficult standard. The claimant must present evidence which on its face shows that OWCP made an error (for example, proof of a miscalculation in a schedule award). Evidence such as a detailed, well-rationalized medical report which, if submitted prior to the denial, would have created a conflict in medical opinion requiring further development, is not clear evidence of error and would not require a review of the case on the Director's own motion.<sup>7</sup> To establish 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 it committed an error.<sup>8</sup>

### **ANALYSIS**

OWCP properly determined that appellant failed to file a timely application for review. Its procedures provide that the one-year time-limitation period for requesting reconsideration begins on the date of the original OWCP decision.<sup>9</sup> A right to reconsideration within one year

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> 20 C.F.R. § 10.607(a). The one-year period begins on the date of the original decision, and an application for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought for merit decisions issued on or after August 29, 2011. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011).

<sup>6</sup> *Id.* at § 10.607(b).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5(a) (October 2011); *Richard J. Rhodes*, 50 ECAB 259, 264 (1999).

<sup>8</sup> *Robert F. Stone*, 57 ECAB 292 (2005); *Leon D. Modrowski*, 55 ECAB 196 (2004); *Darletha Coleman*, 55 ECAB 143 (2003).

<sup>9</sup> *Supra* note 5.

also accompanies any subsequent merit decision on the issues.<sup>10</sup> As appellant's March 7, 2014 request for reconsideration was received more than one year after the last merit decision of record dated February 21, 2008, it was untimely. Consequently, she must demonstrate clear evidence of error by OWCP in denying her claim for compensation.<sup>11</sup>

On reconsideration appellant argued that her supervisor violated FECA by not signing a 2007 Form CA-7. She resubmitted a claim for compensation (Form CA-7) dated December 17, 2007 requesting compensation from July 21 to August 19, 2007. Appellant also submitted a statement from a witness who saw her fall on July 21, 2007. The issue, however, is whether the medical evidence is sufficient to establish that she sustained a work-related medical condition on July 21, 2007. In order to establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>12</sup> The claim for compensation and witness statement are not relevant to this issue.

Appellant also resubmitted a December 13, 2007 report from Dr. Wood, who discussed appellant's history of injuries to her knee in December 2006 and July 2007. Dr. Wood diagnosed probable left knee chondromalacia and ruled out a torn meniscus or internal derangement. His report was already of record and appellant, in submitting this evidence, did not explain how it manifested on its face that OWCP committed an error in denying her claim for compensation. Resubmission of this evidence is not sufficient to raise a substantial question as to the correctness of OWCP's decision and thus is insufficient to show clear evidence of error.<sup>13</sup>

Appellant additionally submitted a January 30, 2008 operative report. The Board has held that even a detailed well-rationalized medical report is still insufficient to establish error.<sup>14</sup>

On December 7, 2010 Dr. Wood evaluated appellant for an alleged December 6, 2010 injury, and on July 19, 2011 he evaluated her for an alleged July 13, 2011 injury. This evidence is not relevant to the question of whether appellant sustained an injury on July 21, 2007.<sup>15</sup>

Appellant has not submitted evidence or argument sufficient to raise a substantial question as to the correctness of OWCP's last merit decision; thus, she has not established clear evidence of error.<sup>16</sup>

On appeal appellant argues that she sustained a work injury on July 21, 2007 and underwent surgery for this injury in 2008. She alleges that she is entitled to time lost from work,

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<sup>10</sup> *Robert F. Stone, supra* note 8.

<sup>11</sup> *Supra* note 6; see *Debra McDavid*, 57 ECAB 149 (2005).

<sup>12</sup> *Howard Y. Miyashiro*, 51 ECAB 253 (1999).

<sup>13</sup> See *A.C.*, Docket No. 14-1883 (issued January 26, 2015).

<sup>14</sup> *Supra* note 7.

<sup>15</sup> See *supra* note 12.

<sup>16</sup> See *G.H.*, 58 ECAB 183 (2006); *Veletta C. Coleman*, 48 ECAB 367 (1997).

lost overtime, and medical expenses. However, as noted, the Board does not have jurisdiction to review the merits of the claim.

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration as it was untimely filed and did not establish clear evidence of error.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 12, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board