

FACTUAL HISTORY

On March 15, 2012 appellant, then a 42-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her bilateral thighs and upper legs when the gate of a general purpose container came off as she closed it for dispatch. Her regular work schedule was Thursday through Monday, from 10:00 p.m. to 6:30 a.m.

In a report dated March 19, 2012, Dr. Rena R. Amro, a Board-certified orthopedic surgeon, diagnosed pain, bone contusion, and internal derangement of the left knee, and pain and laceration of the right leg. Appellant told Dr. Amro that she pulled the front gate of a general purpose container on the morning of March 15, 2012, when the door malfunctioned, fell, and hit her left knee. The door weighed approximately 20 pounds and caused immediate pain and swelling to her left knee. The gate latch hit appellant's right knee and caused a laceration.² In a duty status report dated March 19, 2012, Dr. Amro noted that appellant was not advised to return to work.

Appellant submitted reports from physical therapists dating from March 21, 2012 through January 8, 2014.

In a report dated May 30, 2012, Dr. Amro noted that appellant still had pain in the front of her left knee and that her ankle had improved with iontophoresis treatment. She noted that appellant had returned to work with restrictions and that she was in the "stand by" room. To the assessments previously listed, Dr. Amro added left knee chondromalacia of the patella and removed internal derangement of the left knee. In a duty status report dated May 30, 2012, she noted that appellant could return to work on April 18, 2012 on a part-time trial basis of no more than four hours per day with no work restrictions. Dr. Amro renewed this restriction in a duty status report dated June 6, 2012.

On May 31, 2012 the employing establishment offered appellant a limited-duty position with physical requirements of standing, walking, and twisting for an average of four hours per day and reaching above the shoulder for an average of two hours per day. Appellant accepted this assignment on the same date.

In a report dated June 6, 2012, Dr. Amro noted that appellant had returned for a follow-up and wished to proceed with a knee injection for pain in the front of her left knee. On June 7, 2012 she noted that appellant had returned with increased pain in her left knee after the injection, and that appellant had taken off work on June 6, 2012.

In a workers' compensation status report and a duty status report dated June 6 and June 7, 2012, respectively, Dr. Amro noted that appellant could return to work with no restrictions, but for only four hours per day. She stated that appellant had been out of work on June 6, 2012. In a report dated June 13, 2012, Dr. Amro noted that appellant had increased pain in her left knee after an injection the previous week. She stated that appellant had been out of work on June 8 through 10, 2012 due to her knee pain.

² This history of injury was repeated in the follow-up reports of Dr. Amro up to August 23, 2012.

On June 7, 2012 OWCP accepted appellant's claim for a left knee contusion and a sprain of the left knee and leg.

On July 2, 2012 Dr. Amro submitted another duty status report advising appellant to work four hours per day with no restrictions.

In the report dated July 2, 2012, Dr. Amro noted that appellant was unable to work on June 28 and 29, 2012 due to pain in her left knee. Her findings on physical examination and assessments remained the same as in the report of May 30, 2012, except that she added an assessment of left knee partial medial meniscus tear. On July 10, 2012 Dr. Amro noted that appellant had missed work on July 7 and 8, 2012 due to increased left knee pain. In a report dated July 27, 2012, she stated that appellant was unable to work on July 20 and 21, 2012 due to pain in her left knee. Dr. Amro also submitted a duty status report on this date continuing appellant's four-hour workday restriction.

On July 10, 2012 appellant claimed wage-loss compensation (Form CA-7) for leave without pay, loss of night differential, and loss of Sunday premium for intermittent absences between May 31 and June 15, 2012. A supervisor noted that appellant claimed 101.77 hours of wage-loss compensation. In a time analysis form, appellant noted that she claimed 1.98 hours of leave without pay on May 31, 2012; 4.01 hours on June 1, 2012; 3.97 hours on June 2, 2012; 3.88 hours on June 3, 2012; 3.97 hours on June 4, 2012; 3.98 hours on June 8, 2012; 4 hours on June 14, 2012; and 3.98 hours on June 15, 2012 due to her medical restriction of working no more than 4 hours per day. Appellant claimed eight hours of leave without pay on June 7 and June 9 through 11, 2012 due to a cortisone injection leaving her unable to walk or bend her knee on those dates.

In a separate Form CA-7 dated July 10, 2012, appellant claimed wage-loss compensation for leave without pay, loss of night differential, and loss of Sunday premium for intermittent absences between June 16 and 29, 2012. A supervisor noted that appellant was claiming 47.58 hours of wage-loss compensation. In a time analysis form, appellant noted that she claimed 3.47 hours of leave without pay on June 16, 2012; 3.95 hours on June 17, 2012; 3.99 hours on June 18, 2012; 3.93 on June 21, 2012; 3.89 on June 22, 2012; 3.94 on June 23, 2012; 3.94 on June 24, 2012; and 3.97 on June 28, 2012 due to her medical restriction of working no more than 4 hours per day. Appellant claimed eight hours of leave without pay on June 25 and 29, 2012 due to an inability to walk or bend her knee.

By letter dated July 25, 2012, OWCP informed appellant that she had provided insufficient evidence to support her claim for compensation for the period May 31 through June 29, 2012. It noted that the medical reports contained only a diagnosis of pain. OWCP requested that appellant submit a complete and comprehensive narrative report, including a history of injury and a thorough explanation of how her condition worsened such that she was no longer able to perform her duties after she stopped work on May 31, 2012.

On July 31, 2012 appellant requested wage-loss compensation for leave without pay, loss of night differential, and loss of Sunday premium for intermittent absences between June 30 and July 27, 2012. A supervisor noted that appellant was claiming 79.54 hours of wage-loss compensation. In a time analysis form, appellant noted that she claimed 3.97 hours of leave

without pay on July 5, 2012; 4 hours on July 6, 2012; 4 hours on July 7, 2012; 4 hours on July 8, 2012; 4 hours on July 12, 2012; 3.88 hours on July 13, 2012; 3.98 hours on July 14, 2012; 4 hours on July 15, 2012; 3.97 hours on July 16, 2012; 3.95 hours on July 20, 2012; 3.95 hours on July 21, 2012; 3.95 hours on July 22, 2012; 3.93 hours on July 23, 2012; 3.97 hours on July 26, 2012; and 3.99 hours on July 27, 2012. Appellant claimed eight hours of leave without pay on June 30 and July 1, 2012 due to an inability to walk or bend her knee.

By letter dated August 6, 2012, OWCP informed appellant that her claim for compensation for the period June 30 through July 27, 2012 required more evidence to support disability during that period. It noted that there were no time analysis forms of record and that she had not submitted findings on examination from her physician justifying disability for the claimed period.

In a duty status report dated August 10, 2012, Dr. Amro recommended that appellant return to work full time with restrictions of no standing greater than 30 minutes continuously and limited walking, and that she must wear braces. On August 14, 2012 she noted that appellant had attempted to return to work for eight hours per day with restrictions. Dr. Amro noted that appellant had pain and clicking in the left knee with trouble standing.

In a report dated August 31, 2012, Dr. Amro noted that appellant had to miss work on August 24 through 26, 2012 due to swelling in the knee. In a workers' compensation status report of the same date, she recommended that appellant work full duty without restrictions.

By decision dated September 10, 2012, OWCP denied appellant's claims for compensation for wage loss between May 31 and July 27, 2012. It stated that she never responded to its request for a time analysis form detailing the number of hours and days requested. OWCP further stated that the medical evidence provided showed no evidence of disability or that appellant's physician had taken her off work.

On September 30, 2012 the employing establishment offered appellant a limited-duty position with physical requirements of no standing greater than 30 minutes continuously, limited walking, wearing a brace while working, and avoiding squatting, kneeling, and bending. Appellant accepted this offer on the same date.

On November 2, 2012 OWCP issued an amended acceptance letter, which accepted the conditions of bilateral knee contusion, knee and leg sprain, left ankle contusion and a right lower leg laceration without complications.

In a duty status report dated December 19, 2012, Dr. Amro restated appellant's restrictions of August 10, 2012.

On April 17, 2013 OWCP updated appellant's accepted conditions, adding internal derangement of the left knee. It authorized left knee surgery on April 17, 2013.

In an operative report dated April 30, 2013, Dr. Amro described appellant's left knee surgery. Appellant's postoperative diagnoses included left knee internal derangement, left knee medial meniscal tear, left knee lateral meniscal tear, and a left knee osteochondral defect of the

medial femoral condyle. In a postsurgical report dated May 20, 2013, Dr. Amro noted that appellant was still out of work.

On June 5, 2013 appellant claimed wage-loss compensation for intermittent leave without pay, loss of night differential, and loss of Sunday premium for the period April 27 through May 31, 2013.

By letter dated June 10, 2013, OWCP authorized payment for wage-loss compensation for the period April 30 through May 31, 2013. On July 16, 2013 it denied appellant's claim for compensation for the period April 27 through 29, 2013.

Dr. Amro submitted duty status reports dated June 5 and July 3, 2013, stating that appellant was not advised to return to work. In a duty status report dated July 31, 2013, she recommended that appellant work no more than 4 hours per day, with restrictions of no more than 30 minutes of continuous standing or walking, no bending or stooping, no more than 4 hours of twisting, no more than 2 hours of pulling or pushing, and wearing of a brace. In a report dated August 1, 2013, Dr. Amro noted that appellant had increased pain and swelling in her left knee after twisting it in an elevator, and that she was unable to return to work July 31, 2013. On examination, she found tenderness to palpation over the patella and joint line tenderness. Dr. Amro diagnosed appellant with contusions of the ankle and knee, pain in the limb and joint involving the lower leg, an open wound of the hip and thigh without complication, sprain of the knee and leg, unspecified injury to the knee, unspecified accident and unspecified internal derangement of the knee.

On August 5, 2013 appellant requested wage-loss compensation for leave without pay, loss of night differential, and loss of Sunday premium from June 1 through July 23, 2013. A supervisor noted that appellant was claiming 304 hours of wage-loss compensation.

On August 8, 2013 the employing establishment offered appellant a limited-duty position at 4 hours per day with physical requirements of standing and walking in no more than 30-minute intervals, reaching above the shoulder for no more than 2 hours, and twisting/pulling/pushing for no more than 4 hours. Appellant accepted on the same date.

In a report dated August 15, 2013, Dr. Amro noted that appellant did not go to work on August 14, 2013 due to increased pain in her left knee. On examination, she noted a healed incision with joint line tenderness. In a duty status report dated August 15, 2013, Dr. Amro recommended work restrictions of no more than 4 hours of work per day, no more than 30 minute intervals of standing or walking, use of a brace, and avoiding kneeling/squatting/bending. On August 28, 2013 she noted that appellant had been working four hours per day and that she had been unable to work on August 24 and 25, 2013 due to increased knee pain. On examination, Dr. Amro noted minimal swelling and effusion with joint line tenderness.

By letter dated September 13, 2013, received by OWCP on the same date, appellant's representative requested compensation for appellant's wage losses from May 31 through July 27, 2012, which totaled 188.89 hours. She submitted an addendum to Dr. Amro's reports, signed by Dr. Amro, which stated, "The patient was unable to work more than four hours a day from May 30, 2012 to August 10, 2013 due to an acute exacerbation of her knee symptoms. Appellant

had increased pain and swelling with buckling of the left knee. [The patient] was unable to tolerate more than [four] hours of standing on the knee per workday. [She] subsequently required surgery for the knee which indicated meniscal tears and a large osteochondral defect which were not diagnosed on the previous [two] MRIs of the knee.”

In a duty status report dated September 18, 2013, Dr. Amro recommended work restrictions of no more than six hours of work per day. Her recommendations were otherwise unchanged from August 15, 2013. On October 8 and 10, 2013 Dr. Amro reiterated her recommendations, and noted that appellant had been off work from October 7 through 9, 2013. On October 10, 2013 she noted that appellant was unable to work on October 9, 2013 due to acute exacerbation of her knee symptoms. On examination, Dr. Amro noted effusion and joint line tenderness.

On October 11, 2013 the employing establishment offered appellant a limited-duty position at six hours of work per day. The physical requirements included no stooping or bending, no squatting or kneeling, and 30-minute limited intervals of standing/walking. Appellant accepted the limited-duty position on the same date.

In a report dated October 28, 2013, Dr. Amro noted that appellant missed work from October 25 through 27, 2013 due to increased pain in her left knee. On examination, she noted joint line tenderness and minimal effusion. In a duty status report of the same date, Dr. Amro reiterated the work restrictions of October 10, 2013. She continued to recommend these restrictions on November 15, 2013.

On November 22, 2013 appellant claimed wage-loss compensation for leave without pay, loss of night differential, and loss of Sunday premium, for continuous absence between July 24 and August 7, 2013. A supervisor noted that she requested 80 hours of wage-loss compensation.

By letter dated December 5, 2013, OWCP authorized payment for wage-loss compensation for the period July 25 through 29, 2013. A review of appellant’s compensation history reveals that this payment was made on December 27, 2013. It stated that it had not received any evidence for the dates from July 31 through August 7, 2013, because she was released to part-time work. OWCP requested that appellant submit additional evidence within 30 days.

On December 6, 2013 appellant claimed wage-loss compensation for intermittent leave without pay, loss of night differential, and loss of Sunday premium from August 8 through December 6, 2013. A supervisor indicated that she claimed 260.45 hours of wage-loss compensation. In a time analysis form, appellant noted that she claimed four hours of leave without pay per day from August 8 through September 16, 2013. She claimed two hours of leave without pay per day from September 19 to December 6, 2013. Appellant claimed 8 hours of leave without pay on August 25 and 26, 2013 due to a knee injection and on October 10, October 26 through 28, and November 28, 2013 due to her physician’s medical restrictions.

In a duty status report dated December 18, 2013, Dr. Amro reiterated the work restrictions of November 15, 2013.

By letter dated December 23, 2013, appellant's representative noted that appellant did not return to work in a four-hour per day capacity until August 8, 2013, and that she was entitled to wage-loss compensation for the period from July 31 through August 7, 2013.

By letter dated January 2, 2014, OWCP authorized payment for wage-loss compensation for four hours per day from August 8 through September 16, 2013. It authorized payment for two hours per day from September 19 through December 6, 2013. A review of appellant's compensation history reveals that this payment was made on January 10, 2014. It stated that it could not make payment for eight hours of leave without pay on August 25, 2013; six hours on October 26 through 27 and November 28, 2013; and four hours on August 26, October 10, and October 28, 2013. OWCP explained that appellant was claiming a full eight hours of leave without pay each day when her limitations confirmed that she could work partial days. It afforded her 30 days to submit additional evidence.

By decision dated January 10, 2014, OWCP denied appellant's claim for compensation for the period July 24 through August 7, 2013. It found that she had not submitted sufficient evidence to explain why she was unable to work during this period.

By decision dated February 4, 2014, OWCP denied appellant's claim for compensation for the period August 8 through December 6, 2013. It found that she had not established disability for eight hours of leave without pay on August 25, 2013; six hours on October 26 through 27 and November 28, 2013; and four hours on August 26, October 10 and 28, 2013.

By letter dated February 28, 2014, appellant's representative clarified that her September 13, 2013 letter was intended as a request for reconsideration of the September 10, 2012 denial letter.

By decision dated March 5, 2014, OWCP denied appellant's request for reconsideration as being untimely filed and failing to establish clear evidence of error. It noted that her letter did not present evidence that was clear on its face that OWCP erred in its decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.³ For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.⁴ Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁵ The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would

³ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁴ See *Amelia S. Jefferson*, *id.* See also *David H. Goss*, 32 ECAB 24 (1980).

⁵ See *Edward H. Horton*, 41 ECAB 301 (1989).

essentially allow an employee to self-certify his or her disability and entitlement to compensation.⁶

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁷ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁹ Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹⁰

OWCP regulations provide that, where an attending physician notifies the employing establishment in writing that the employee can return to restricted duty, the employing establishment must advise the employee in writing of any available positions which accommodate his restrictions.¹¹ The offer must include a description of the duties of the position, the physical requirements of those duties and the date by which the employee is either to return to work or notify the employing establishment of his decision to accept or refuse the job offer. When the employing establishment sends a copy of the offer to the employee, it must simultaneously send a copy of the offer to OWCP.¹²

If an employee can resume regular federal employment, he or she must do so.¹³ However, if he or she cannot return to the job held at the time of injury, but has recovered enough to perform some type of work, the employee must seek work.¹⁴ Where the employer has specific alternative positions available for partially disabled employees, the employer should advise the employee in writing of the specific duties and physical requirements of those

⁶ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ See *Viola Stanko (Charles Stanko)*, 56 ECAB 436 (2005); see also *Naomi A. Lilly*, 10 ECAB 560, 572-573 (1959).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

⁹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁰ *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).

¹¹ 20 C.F.R. § 10.507(b).

¹² *Id.* at § 10.507(d).

¹³ *Id.* at § 10.515(a).

¹⁴ *Id.* at § 10.515(b).

positions.¹⁵ If there are no specific positions available, the employer should notify the employee of accommodations it can make to accommodate his injury.¹⁶

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained bilateral knee contusions, sprain of the left knee and leg, a left ankle contusion, an open wound of the hip and thigh without complications, and an unspecified internal derangement of the left knee due to a work-related injury on March 15, 2012.

Appellant claimed compensation for continuous temporary total disability between July 24 and August 7, 2013. OWCP authorized a payment for the period July 25 through 29, 2013, but denied the remainder of this claim, explaining that she was released to part-time work for the dates July 31 through August 7, 2013.

Dr. Amro submitted duty status reports dated June 5 and July 3, 2013, stating that appellant was not advised to return to work. In a duty status report dated July 31, 2013, she recommended that appellant work no more than 4 hours per day, with restrictions of no more than 30 minutes of continuous standing or walking, no bending or stooping, no more than 4 hours of twisting, no more than 2 hours of pulling or pushing, and wearing of a brace. Dr. Amro's work restrictions were supported by findings on examination and directly addressed the dates of appellant's disability. On August 8, 2013 the employing establishment offered appellant a limited-duty position at 4 hours per day with physical requirements of standing and walking in no more than 30-minute intervals, reaching above the shoulder for no more than 2 hours, and twisting/pulling/pushing for no more than 4 hours. Appellant accepted the limited-duty position on the same date.

The Board finds that appellant has established that she was disabled from July 31 through August 7, 2013 causally related to her March 15, 2013 employment injury.¹⁷ While her attending physician released her to return to limited duty on July 31, 2013, the employing establishment did not offer her a limited-duty position in writing as required by the implementing regulations until August 8, 2013. Accordingly, neither appellant nor her physician were put on notice of any specific alternative positions existing prior to that time. As there is no indication that the employing establishment provided her with a written limited-duty job offer in accordance with the applicable regulations, OWCP erred in finding that she had not established entitlement to disability compensation from July 31 through August 7, 2013.¹⁸

¹⁵ *Id.* at § 10.505 (a). A similar written requirement is imposed with respect to offers of suitable work. *See id.* at § 10.506(c) and (d).

¹⁶ *Id.* at § 10.505(b).

¹⁷ With regard to the date of July 24, 2013, OWCP properly found that appellant had not established entitlement to compensation as this date, a Wednesday, was not part of appellant's regular work schedule of Thursday through Monday from 10:00 p.m. through 6:30 a.m.

¹⁸ *See B.S.*, Docket No. 11-1973 (issued May 7, 2012).

Appellant also claimed compensation for intermittent partial disability between August 8 and December 6, 2013 based on her work restrictions of working no more than four or six hours per day between those dates. OWCP authorized payment for four hours of wage-loss compensation per day on dates of August 8 through September 16, 2013; and for two hours of wage-loss compensation per day on dates of September 19 through December 6, 2013. It stated that it could not make payment for eight hours of leave without pay on August 25, 2013; six hours on October 26 through 27 and November 28, 2013; and four hours on August 26, October 10 and 28, 2013. OWCP explained that appellant was claiming a full eight hours of leave without pay each day when her limitations confirmed that she could work partial days.

The Board finds that appellant has established that she was disabled on August 25, 2013 and from October 26 to 27, 2013, causally related to her March 15, 2013 employment injury. On August 28, 2013 Dr. Amro noted that appellant had been working four hours per day and that she had been unable to work on August 24 and 25, 2013. On examination, she noted minimal swelling and effusion with joint line tenderness. Dr. Amro diagnosed appellant with contusions of the ankle and knee, an open wound of the hip and thigh without complication, unspecified injury to the knee, unspecified internal derangement of the knee, and sprain of the knee and leg. In a report dated October 28, 2013, she acknowledged appellant's absence from work for the period October 25 through 27, 2013. On examination, Dr. Amro noted joint line tenderness and minimal effusion. Thus, appellant had submitted medical evidence from her attending physician supporting disability for the full workdays of August 25, 2013 and from October 26 to 27, 2013. There is no medical evidence of record supporting disability for the remaining six hours on November 28, 2013 and four hours on August 26, October 10 and 28, 2013. Hence, OWCP properly denied wage-loss compensation due to disability for these dates.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

To be entitled to a merit review of an OWCP decision denying or terminating a benefit, an application for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁹ The Board has found that the imposition of the one-year limitation does not constitute an abuse of the discretionary authority granted OWCP under section 8128(a) of FECA.²⁰ When review is sought for merit decisions issued on or after August 29, 2011, timeliness is determined by the document receipt date of the reconsideration. If the request for reconsideration is received more than one year after the last decision, the request must be considered untimely.²¹

¹⁹ 20 C.F.R. § 10.607(a).

²⁰ 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

²¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011).

OWCP may not deny an application for review solely on the grounds that the application was not timely filed. When an application for review is not timely filed, it must nevertheless undertake a limited review to determine whether the application establishes clear evidence of error.²² OWCP regulations and procedures provide that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's application for review shows clear evidence of error on the part of OWCP.²³

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.²⁴ The evidence must be positive, precise and explicit and must manifest on its face that OWCP committed an error.²⁵ Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.²⁶ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.²⁷ 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.²⁸

In order to establish clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must be of sufficient probative value to *prima facie* shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.²⁹ The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP such that it abused its discretion in denying merit review in the face of such evidence.³⁰

ANALYSIS -- ISSUE 2

OWCP properly determined that appellant failed to file a timely application for review of its decision dated September 10, 2012. Its procedures provide that the one-year time limitation

²² See 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

²³ 20 C.F.R. § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5(a) (October 2011). OWCP's procedures further provide, "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 a mistake. For example, a claimant provides proof that a schedule award was miscalculated, such as a marriage certificate showing that the claimant had a dependent but the award was not paid at the augmented rate."

²⁴ See *Dean D. Beets*, 43 ECAB 1153, 1157-58 (1992).

²⁵ 20 C.F.R. § 10.607(b); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

²⁶ See *Jesus D. Sanchez*, 41 ECAB 964, 968 (1990).

²⁷ See *Leona N. Travis*, *supra* note 25.

²⁸ See *Nelson T. Thompson*, 43 ECAB 919, 922 (1992).

²⁹ See *Velvetta C. Coleman*, 48 ECAB 367, 370 (1997).

³⁰ See *Pete F. Dorso*, 52 ECAB 424, 427 (2001); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

period for requesting reconsideration begins on the date of the original OWCP decision.³¹ A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.³² As noted above, when review is sought for merit decisions issued on or after August 29, 2011, timeliness is determined by the document receipt date of the reconsideration. If the request for reconsideration is received more than one year after the last decision, the request must be considered untimely.³³ As OWCP received appellant's request for reconsideration more than one year after September 10, 2012, on September 13, 2013, appellant's request for reconsideration was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in denying her claim for compensation.³⁴

The underlying claim for compensation was denied as appellant had not established, by submission of medical evidence, that she was disabled from work for the period May 31 through July 27, 2012. The September 10, 2012 decision stated that appellant never responded to its request for a time analysis form detailing the number of hours and days requested, and that the medical evidence provided showed no evidence of disability or that her physician had taken her off work. The Board has duly considered the case record and finds that OWCP has not abused its discretion in denying merit review of its September 10, 2012 decision.

On reconsideration, appellant submitted an addendum to Dr. Amro's reports, which read "The patient was unable to work more than four hours a day from May 30, 2012 to August 10, 2013 due to an acute exacerbation of her knee symptoms. She had increased pain and swelling with buckling of the left knee. Appellant was unable to tolerate more than four hours of standing on the knee per work day. This patient subsequently required surgery for the knee which indicated meniscal tears and a large osteochondral defect which were not diagnosed on the previous two MRIs of the knee."

The Board has held that even a report such as 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 not sufficient to establish clear evidence of error.³⁵ OWCP procedures further provide that the term clear evidence of error is intended to represent a difficult standard.³⁶ This report fails to establish on its face that OWCP committed error in its March 5, 2014 decision.

CONCLUSION

The Board finds that appellant met her burden of proof to establish work-related disability on August 25 and October 26 and 27, 2013. The Board further finds that appellant

³¹ 20 C.F.R. § 10.607(a).

³² *Robert F. Stone*, 57 ECAB 292, 295 (2005).

³³ *Supra* note 5.

³⁴ *Supra* note 7; *see D.G.*, 59 ECAB 455, 458 (2008).

³⁵ *A.R.*, Docket No. 15-1598 (issued December 7, 2015).

³⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsideration*, Chapter 2.1602.5a (October 2011).

failed to establish work-related disability for six hours on November 28, 2013 and four hours on August 26, October 10 and 28, 2013. Finally, the Board also finds that OWCP properly refused to reopen her claim for further review of the merits as it was untimely filed and failed to present clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the February 4 and January 10, 2014 decisions of the Office of Workers' Compensation Programs are affirmed, as modified. The March 5, 2014 decision of OWCP is set aside and the case remanded for further action consistent with this decision.

Issued: February 1, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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