

FACTUAL HISTORY

On July 23, 2014 appellant, then a 44-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on June 19, 2014 he sustained a left knee injury when his coworker pushed a stretcher against him and pinned him against a wall. The claim form did not indicate whether appellant stopped work.

Appellant was initially treated in the employing establishment's employee health unit on July 22, 2014 by Audrey Rice, a physician assistant. She described a "June 16, 2014" employment incident and related that appellant continued to work even though he experienced knee stiffness and pain. Ms. Rice reported no swelling, crepitus, or tenderness and full range of motion of appellant's left knee. She diagnosed status post left knee soft tissue injury. Ms. Rice provided a July 22, 2014 duty status report (Form CA-17), which indicated that appellant could return to work as tolerated.

On July 23, 2014 appellant was offered a temporary light-duty assignment, which he accepted on July 28, 2014.

The employing establishment provided a July 25, 2014 memorandum which indicated that continuation of pay (COP) was not authorized because appellant did not file his claim within 30 days of the date of injury. It also provided a request for examination and/or treatment of job-related injury form wherein appellant noted that he elected to receive medical treatment from his private physician.

By letter dated August 7, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he respond to the attached questionnaire in order to substantiate the factual element of his claim and submit additional medical evidence to establish a diagnosed medical condition causally related to the alleged June 19, 2014 employment incident. Appellant was afforded 30 days to submit the additional evidence.

In reports dated August 7 and 21, 2014, Dr. Maria Adelaida Martin, a family practitioner, related that appellant still complained of left knee pain after a workplace accident. She reported tenderness of the patellofemoral tendon of the left knee and diagnosed soft tissue injury, left knee pain, and left knee medial collateral ligament strain. Dr. Martin provided CA-17 forms and work status notes, which authorized appellant to return to work with restrictions of no lifting more than 20 pounds.

On August 25, 2014 OWCP received appellant's response to its development letter. Appellant explained that he did not file his claim within 30 days of the date of injury because he was a nurse, so he treated himself with pain medication, elevation, and warm and cold compresses. He noted that he reported the injury to his manager on June 19, 2014. Appellant related that after a few weeks, the symptoms continued to come and go and worsened with movement of patients, beds, and medication carts. He explained that he then decided to file a claim because he suspected there was more damage than he had initially thought and because his manager encouraged him to file since he was not receiving relief from his self-treatment. Appellant indicated that he did not sustain any other left knee injury and did not have any similar preexisting left knee conditions, disability, or symptoms.

On September 4, 2014 appellant returned to full duty.

By decision dated September 11, 2014, OWCP accepted appellant's claim for left knee medial collateral ligament sprain. In a separate September 11, 2014 decision, it denied appellant's claim for COP benefits because he did not file his traumatic injury claim within 30 days of the June 19, 2014 employment injury.

On December 10, 2015 appellant requested an oral hearing before an OWCP hearing representative. In a decision dated May 4, 2016, an OWCP hearing representative denied appellant's request for a hearing. He determined that, because appellant did not file his request within 30 days of the most recent OWCP decision, he was not entitled to an oral hearing or a review of the written record as a matter of right. The hearing representative further exercised his discretion and denied appellant's request for a hearing as he found that the issue in the case could be addressed equally well on reconsideration.

On June 3, 2016 appellant requested reconsideration of the September 11, 2014 decision.

Appellant submitted a June 3, 2016 e-mail from A.H., a nurse manager at the employing establishment. A.H. reported that appellant notified her of the June 19, 2014 employment injury, but she was not able to enter the injury in the system because she was unable to log into the system. She related that on July 22, 2014 appellant informed her that he was still having problems with his knee and wanted to file a claim.

By decision dated August 31, 2016, OWCP denied appellant's reconsideration request. It found that the June 3, 2016 reconsideration request was untimely filed and failed to demonstrate clear evidence that OWCP's September 11, 2014 decision was in error.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.³ This section vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.⁴ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority. One such limitation is that OWCP will not review a decision denying or terminating a benefit unless the application for review is timely.⁵ In order to be timely, a request for reconsideration must be received by OWCP within one year of the date of OWCP's merit decision for which review is sought. Timeliness is determined by the document receipt date of the reconsideration request.⁶

³ *Thankamma Matthews*, 44 ECAB 765, 768 (1993).

⁴ *Id.* at 768; *see also Jesus D. Sanchez*, 41 ECAB 964, 966 (1990).

⁵ 20 CFR § 10.607(a); 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. 5 USC § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989)

⁶ *Id.* at § 10.607; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

OWCP, however, may not deny an application for review solely because the application was untimely filed. It may consider an untimely application for reconsideration if the evidence or argument contained in the reconsideration request demonstrates clear evidence of error on the part of OWCP.⁷ In this regard, OWCP will conduct a limited review of how the newly submitted evidence bears on the prior evidence of record.⁸

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.⁹ Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.¹⁰ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹¹ The evidence submitted must not only be of sufficient probative value to create a conflicting medical opinion or establish a clear procedural error, but must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.¹² 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 insufficient to demonstrate clear evidence of error.¹³

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.¹⁴

ANALYSIS

OWCP's last merit decision is dated September 11, 2014. It denied appellant's claim for COP. On June 3, 2016 OWCP received appellant's request for reconsideration. In a decision dated August 31, 2016, it denied appellant's request for reconsideration because it was untimely filed and failed to demonstrate clear evidence of error.

The Board finds that OWCP properly determined that appellant failed to file a timely application for review. Timeliness is determined by the document receipt date of the reconsideration request (the received date in the Integrated Federal Employees' Compensation

⁷ See *id.* at § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁸ See *id.* at § 10.607(b); *Nelson T. Thompson*, 43 ECAB 919 (1992).

⁹ 20 CFR § 10.607(b); *Fidel E. Perez*, 48 ECAB 663 (1997).

¹⁰ *Jimmy L. Day*, 48 ECAB 652 (1997).

¹¹ See *Leona N. Travis*, 43 ECAB 227, 240 (1991).

¹² *Annie L. Billingsley*, 50 ECAB 210 (1998).

¹³ A.R., Docket No. 15-1598 (issued December 7, 2015).

¹⁴ *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

System (iFECS)).¹⁵ OWCP accepted appellant's traumatic injury claim, but denied COP by decision dated September 11, 2014. It did not, however, receive appellant's latest request for reconsideration until June 3, 2016, which was well beyond the one-year time limit. As such, appellant must demonstrate clear evidence of error by OWCP in denying his claim for COP.¹⁶

The Board has reviewed the record and finds that the evidence submitted in the untimely request for reconsideration does not raise a substantial question as to the correctness of OWCP's September 11, 2014 decision and is therefore insufficient to demonstrate clear evidence of error.

In its most recent merit decision, OWCP denied appellant's COP claim because he did not file his traumatic injury claim within 30 days of the June 19, 2014 employment injury. Along with his most recent reconsideration request, appellant provided a June 3, 2016 e-mail from A.H., a nurse manager, who related that appellant notified her of the June 19, 2014 employment injury, but explained that she was not able to input the injury into the system because she could not log into the system. Appellant did not file his Form CA-1 until July 31, 2014. Although the e-mail indicated that appellant notified the employing establishment about his job-related injury, the Board has found that there is no provision in FECA for excusing a late filing for COP.¹⁷ Accordingly, it does not raise a substantial question as to the correctness of OWCP's decision and is insufficient to demonstrate clear evidence of error by OWCP with respect to the denial of appellant's COP.

The Board has found that the term "clear evidence of error" is intended to represent a difficult standard.¹⁸ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. The evidence submitted must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.¹⁹

The Board finds that appellant has failed to support his reconsideration request with evidence or argument demonstrating that OWCP's September 11, 2014 decision denying appellant's COP was clearly erroneous. His request was insufficient to raise a substantial question as to the correctness of OWCP's September 11, 2014 decision or shift the weight of the evidence in his favor.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration as untimely filed and failing to demonstrate clear evidence of error.

¹⁵ *Supra* note 6 at Chapter 2.1602.4(b) (February 2016).

¹⁶ *Supra* note 7; *Debra McDavid*, 57 ECAB 149 (2005).

¹⁷ *See L.S.*, Docket No. 16-0088 (issued June 10, 2016).

¹⁸ *James R. Mirra*, 56 ECAB 738 (2005); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5(a) (October 2011).

¹⁹ *Supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the August 31, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 3, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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