

due to tripping on a curb and falling on her right knee while in the performance of duty. On the reverse side of the claim form, appellant's immediate supervisor indicated that appellant had not submitted medical evidence supporting the fact of injury and causal relationship. Appellant stopped work on February 23, 2015 and returned to work on February 26, 2015 in a limited-duty position.² She returned to full-duty work without restrictions on March 17, 2015.

In a development letter dated March 4, 2015, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted a February 24, 2015 narrative report of Dr. Lisa Fuller, an attending Board-certified family practitioner at the Banner Thunderbird Occupational Health Clinic. Dr. Fuller noted that appellant reported that she was a carrier for the employing establishment and that she tripped on a curb on February 23, 2015 and fell, landing on her right knee. She indicated that appellant's primary complaint was moderate pain in her right knee, and diagnosed severe right knee contusion and right knee strain. Dr. Fuller noted that appellant should remain off work until her follow-up evaluation in two days.³ The findings of x-ray testing of appellant's right knee, obtained on February 24, 2015, contained an impression of mild osteoarthritis, including narrowing in the medial compartment, and large joint effusion.

In narrative reports dated February 26 and March 12, 2015, Timothy Uldrich, an attending physician assistant, discussed two follow-up appointments for appellant's right knee complaints. The reports included a description of appellant's claimed February 23, 2015 fall and contained the diagnoses of severe right knee contusion and right knee strain. Mr. Uldrich indicated in the March 12, 2015 report that appellant could return to full-duty work on March 17, 2015. In a March 5, 2015 narrative report, Mary Ellen Radosevich, an attending nurse practitioner, and another person with an illegible signature discussed a follow-up appointment for appellant's right knee complaints. The report also included a description of appellant's claimed February 23, 2015 fall and contained the diagnoses of severe right knee contusion and right knee strain.⁴

By decision dated April 16, 2015, OWCP denied appellant's claim for a work-related February 23, 2015 injury. It found that appellant established the occurrence of an employment incident on February 23, 2015 in the form of a trip and fall at work, but that she failed to submit sufficient medical evidence to establish a medical condition related to the accepted employment incident. OWCP noted that Dr. Fuller provided diagnoses for appellant's right knee, but did not address medical causation.

² Appellant used sick leave on February 24 and 25, 2015.

³ In a February 24, 2015 document entitled "Visit Summary for Employer," Dr. Fuller again noted that appellant reported that she tripped and fell on February 23, 2015, landing on her right knee. She diagnosed severe right knee contusion and right knee strain and indicated that appellant should remain off work until her follow-up evaluation in two days.

⁴ The record also contains documents entitled "Visit Summary for Employer," dated in February and March 2015, in which Mr. Uldrich and Ms. Radosevich provided similar information. Appellant also submitted a form report completed by Ms. Radosevich on March 6, 2015 which relates to the Family and Medical Leave Act.

Appellant submitted copies of a February 24, 2015 narrative report of Dr. Fuller, February 26 and March 12, 2015 narrative reports of Mr. Uldrich, and a March 5, 2015 report of Ms. Radosevich and another person with an illegible signature. These reports had previously been submitted to OWCP. She also submitted a Report of Termination of Disability and/or Payment (Form CA-3) in which a supervisor indicated that she returned to full-duty work without restrictions on March 17, 2015 per a physician's report.

In a letter dated December 2, 2016 and received by OWCP on December 6, 2016, appellant requested reconsideration of OWCP's April 16, 2015 decision. She described the circumstances of her fall at work on February 23, 2015 and detailed the treatment she received the next day, per her supervisor's advice, at the Banner Thunderbird Occupational Health Clinic. Appellant indicated that x-rays were taken and that it was concluded that she sustained a severe contusion of her right knee. She advised that she received OWCP's April 2015 decision denying her claim because her physician did not submit any evidence supporting her claim and noted that she "took the paperwork to Banner health to resubmit further information." Appellant reported that she thought the matter had been taken care of in April 2015 and was not sure "where the mix-up happened." She indicated that she was attaching an accident report that was filed at the time of the claimed February 23, 2015 injury and she submitted the first page of the traumatic injury claim she filed on February 25, 2015.

In a December 12, 2016 decision, OWCP denied appellant's request for reconsideration of the merits of her claim finding that it was untimely filed and failed to demonstrate clear evidence of error. It noted that she did not submit any new medical evidence, but that she resubmitted reports which had previously been considered by OWCP and found insufficient to establish her claim.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application. The Secretary, in accordance with the facts found on review, may end, decrease or increase the compensation awarded; or award compensation previously refused or discontinued.⁵

OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, section 10.607(a) of the implementing regulations provide that an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.⁶ Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employee's Compensation System (iFECS).⁷

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.607(a).

⁷ Federal FECA Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (February 2016).

However, OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation, if the claimant's application for review shows clear evidence of error on the part of OWCP in its most recent merit decision. To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue that was decided by OWCP. The evidence must be positive, precise, and explicit and must be manifest on its face that OWCP committed an error.⁸

To show clear evidence of error, 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.⁹ The Board notes that clear evidence of error is intended to represent a difficult standard.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 It is not enough merely to establish that the evidence could be construed so as to produce a contrary conclusion.¹² This entails a limited review by OWCP of the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.¹³ The Board makes an independent determination as to whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁴

ANALYSIS

The Board finds that OWCP properly determined that appellant failed to file a timely request for reconsideration. An application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.¹⁵ As appellant's request for reconsideration was not received by OWCP until December 6, 2016, more than one year after issuance of its April 16, 2015 merit decision, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in its April 16, 2015 decision.

The Board further finds that appellant has not demonstrated clear evidence of error on the part of OWCP in issuing its April 16, 2015 decision. By decision dated April 16, 2015, OWCP denied appellant's claim for a work-related February 23, 2015 injury. It found that appellant established the occurrence of an employment incident on February 23, 2015 in the form of a trip

⁸ *Id.* at § 10.607(b); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

⁹ *Annie L. Billingsley*, 50 ECAB 210 (1998).

¹⁰ *R.K.*, Docket No. 16-0355 (issued June 27, 2016).

¹¹ *Jimmy L. Day*, 48 ECAB 652 (1997).

¹² *Id.*

¹³ *Id.*

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

¹⁵ *See supra* note 6.

and fall at work, but that she failed to submit sufficient medical evidence to establish a medical condition related to the accepted employment incident.

Appellant did not submit the type of positive, precise, and explicit evidence which manifests on its face that OWCP committed an error in its April 16, 2015 decision.¹⁶ In her December 2, 2015 untimely reconsideration request, she discussed the process of submitting evidence to OWCP in support of her claim. Appellant expressed her belief that the evidence of record already established her claim for a work-related February 23, 2015 injury. Her contentions made reference to evidence previously of record and already considered by OWCP in denying her claim. The evidence and argument appellant submitted did not raise a substantial question concerning the correctness of OWCP's April 16, 2015 decision. She submitted the first page of the traumatic injury claim she filed on February 25, 2015 and a Report of Termination of Disability and/or Payment in which a supervisor indicated that she returned to full-duty work without restrictions on March 17, 2015. However, appellant did not explain how these administrative documents demonstrate clear error in OWCP's determination, contained in its April 16, 2015 decision, that she had not submitted sufficient medical evidence relating diagnosed conditions to the accepted February 23, 2015 work incident.

In support of her untimely reconsideration request, appellant also submitted a February 24, 2015 narrative report of Dr. Fuller, an attending physician, February 26 and March 12, 2015 narrative reports of Mr. Uldrich, an attending physician assistant, and a March 5, 2015 report of Ms. Radosevich, an attending nurse practitioner, and another person with an illegible signature. These reports had previously been submitted to and considered by OWCP and appellant did not explain how their mere resubmission showed clear error in OWCP's April 16, 2015 decision.¹⁷ The February 24, 2015 report of Dr. Fuller does not contain an opinion on the cause of the conditions diagnosed in the report and the Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁸ Moreover, the reports of Mr. Uldrich and Ms. Radosevich do not demonstrate clear error in the April 16, 2015 decision because the reports of nonphysicians, including physician assistants¹⁹ or a nurse practitioners,²⁰ do not constitute probative medical evidence under FECA. Appellant did not explain how this evidence raised a substantial question as to the correctness of OWCP's April 16, 2015 decision.

The Board finds that appellant's reconsideration request does not demonstrate on its face that OWCP committed error when it found in its April 16, 2015 decision that appellant failed to establish a work-related injury on February 23, 2015.²¹ As noted, clear evidence of error is

¹⁶ See *supra* note 7.

¹⁷ See *A.M.*, Docket No. 17-1434 (issued January 2, 2018); see also *A.M.*, Docket No. 10-0526 (issued November 8, 2010) (appellant did not sufficiently explain how largely duplicative evidence raised a substantial question as to the correctness of OWCP's decision).

¹⁸ See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹⁹ *R.S.*, Docket No. 16-1303 (issued December 2, 2016); *L.L.*, Docket No. 13-0829 (issued August 20, 2013).

²⁰ *M.C.*, Docket No. 16-1238 (issued January 26, 2017).

²¹ See *S.F.*, Docket No. 09-0270 (issued August 26, 2009).

intended to represent a difficult standard.²² Other than simply reiterating her previous arguments, appellant has not met this standard in this case.

For these reasons, the evidence submitted by appellant does not raise a substantial question concerning the correctness of OWCP's April 16, 2015 decision and OWCP properly determined that appellant did not demonstrate clear evidence of error in that decision.

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 December 12, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 14, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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

²² See *supra* note 9.