



injury when he caught himself from falling while delivering mail. He stopped work on March 5, 2015. OWCP accepted the claim for right quadriceps tendon tear, right knee medial meniscus tear, and left hand finger sprain of the fourth digit.

Appellant sought treatment with Dr. Nikhil G. Pandhi, a Board-certified orthopedic surgeon. On July 1, 2015 he underwent an OWCP-approved right knee arthroscopy. In an August 20, 2015 report, Dr. Pandhi reported that appellant was doing much better following his right knee arthroscopy. Appellant returned to work on August 25, 2015.

On February 22, 2016 appellant filed a claim for a schedule award (Form CA-7).

By development letter dated March 17, 2016, OWCP requested that appellant submit a report from his attending physician addressing his work-related condition, the date of maximum medical improvement (MMI), objective findings, subjective complaints, and an impairment rating rendered according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>2</sup> It afforded appellant 30 days to provide the requested information.

In a May 3, 2016 medical report, Dr. Pandhi reported that appellant was doing well and could return to his full work activities. He provided physical examination findings and a review of diagnostic testing. Dr. Pandhi noted that the right knee did not have symptoms of instability, but that appellant had occasional discomfort along the medial joint line which was manageable.

By decision dated June 3, 2016, OWCP denied appellant's claim for a schedule award, finding that the evidence submitted was insufficient to establish that he sustained permanent impairment of a scheduled member or function of the body.

On June 7, 2017 appellant requested reconsideration of the June 3, 2016 decision. He contended that his physician failed to provide him with the relevant medical evaluation despite numerous requests.

In support of reconsideration, appellant submitted an April 20, 2017 narrative report from Dr. Pandhi. Dr. Pandhi explained that appellant was originally evaluated on March 6, 2015 for a March 4, 2015 injury to his right thigh. Appellant suffered a right quadriceps muscle rupture and right knee medial meniscus tear. Dr. Pandhi noted that the quadriceps injury healed uneventfully, but that the right knee required surgery. On July 1, 2015 appellant underwent a right knee arthroscopy with partial medial meniscectomy and lateral partial meniscectomy without complication. Dr. Pandhi reported that postoperatively, appellant developed prepatellar bursitis which was treated with a cortisone injection on August 20, 2015. He released appellant to full duty on May 3, 2016. Dr. Pandhi evaluated him once again on February 28, 2017 and reiterated the need for long-term core, hip, quadriceps, and hamstring strengthening. His July 1, 2015 operative report was also submitted detailing findings from appellant's right knee arthroscopy.

---

<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

By decision dated August 31, 2017, OWCP denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

### **LEGAL PRECEDENT**

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.<sup>3</sup> Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).<sup>4</sup> 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.<sup>5</sup>

OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation, if the claimant's application for review demonstrates 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 decided by OWCP. The evidence must be positive, precise, and explicit and it must manifest on its face that OWCP committed an error.<sup>6</sup>

To demonstrate 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.<sup>7</sup>

Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.<sup>8</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>9</sup> 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.<sup>10</sup> The Board makes an independent determination as to whether a claimant has submitted clear evidence of error on the part of OWCP.<sup>11</sup>

---

<sup>3</sup> 20 C.F.R. § 10.607(a).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsideration*, Chapter 2.1602.4(b) (February 2016).

<sup>5</sup> See *M.P.*, Docket No. 17-0367 (issued March 12, 2018); *Thankamma Mathews*, 44 ECAB 765 (1993).

<sup>6</sup> 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

<sup>7</sup> *Annie L. Billingsley*, 50 ECAB 210 (1998).

<sup>8</sup> *Jimmy L. Day*, 48 ECAB 652 (1997).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Cresenciano Martinez*, 51 ECAB 322 (2000).

## ANALYSIS

The Board finds that OWCP properly determined that appellant's request for reconsideration was untimely filed within the one-year time limitation period set forth in 20 C.F.R. § 10.607.

In its August 31, 2017 decision, OWCP determined that appellant failed to file a timely application for review. An application for reconsideration must be received within one year of the date of OWCP's merit decision.<sup>12</sup> OWCP issued its most recent merit decision, denying appellant's schedule award claim, on June 3, 2016. A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>13</sup> Therefore, appellant had one year from June 3, 2016 to submit a timely request for reconsideration.<sup>14</sup> Appellant's request for reconsideration was received on June 7, 2016, more than one year after the date of the last merit decision of record on June 3, 2016. Thus, the request for reconsideration was untimely filed.<sup>15</sup>

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.<sup>16</sup> The Board has explained that if appellant has requested reconsideration, and has submitted new and relevant evidence with respect to a permanent impairment or an increased permanent impairment, then a claimant will be entitled to a merit decision on the issue,<sup>17</sup> but when a claimant does not submit any relevant evidence with respect to a permanent impairment or increased permanent impairment, then OWCP will properly consider the request under the standards for reconsideration. As appellant's request for reconsideration was untimely he must demonstrate clear evidence of error by OWCP in denying his claim.<sup>18</sup>

---

<sup>12</sup> 20 C.F.R. § 10.607.

<sup>13</sup> *Supra* note 4.

<sup>14</sup> In computing the time for requesting reconsideration, the date of the event from which the designated time period begins to run shall not be included when computing the time period. However, the last day of the period shall be included unless it is a Saturday, a Sunday, or a legal holiday. The time for requesting reconsideration of OWCP's June 3, 2016 decision began to run on June 4, 2016, and ended on June 3, 2017. The Board notes, however, that June 3, 2017 fell on a Saturday. It is well established that when a time limitation expires on a nonbusiness day, the limitation is extended to include the next business day. Therefore, because the time limitation for filing a request for reconsideration fell on Saturday, the time period for filing a request for reconsideration did not expire until the next business day, which was Monday, June 5, 2017. See *M.H.*, Docket No. 13-1901 (issued January 8, 2014); *Debra McDavid*, 57 ECAB 149, 150 (2005); *Angel M. Lebron, Jr.*, 51 ECAB 488, 490 (2000); *Gary J. Martinez*, 41 ECAB 427, 427-28 (1990).

<sup>15</sup> *P.R.*, Docket No. 14-0300 (issued May 12, 2014).

<sup>16</sup> See *C.H.*, Docket No. 17-0226 (issued June 26, 2018).

<sup>17</sup> See *Linda T. Brown*, 51 ECAB 115 (1999).

<sup>18</sup> See *Debra McDavid*, 57 ECAB 149 (2005).

Appellant submitted a July 31, 2017 note from Dr. Pandhi releasing him from his care. This evidence is immaterial to his schedule award claim and fails to demonstrate clear evidence of error. The only other medical evidence submitted were Dr. Pandhi's July 1, 2015 operative report and his April 20, 2017 narrative report. Dr. Pandhi provided a summary of injury, course of treatment, surgery, postoperative evaluation, and reported that appellant was released to full duty on May 3, 2016. This evidence did not provide a permanent impairment rating. It did not raise a substantial question as to the correctness of OWCP's decision.<sup>19</sup> Rather, these reports were substantially similar to Dr. Pandhi's May 3, 2016 report which was reviewed by OWCP in its June 3, 2016 decision. This evidence was not positive, precise, and explicit in manifesting on its face that OWCP committed an error in denying his schedule award claim.<sup>20</sup> The Board notes that clear evidence of error is intended to represent a difficult standard. Evidence, such as a detailed well-rationalized medical report, which if submitted before the merit denial might require additional development of the claim, is insufficient to demonstrate clear evidence of error.<sup>21</sup> This evidence, however, is insufficient to establish that OWCP erred in its denial of appellant's claim.<sup>22</sup>

Appellant did not submit the type of positive, precise, and explicit evidence that manifests on its face that OWCP committed an error.<sup>23</sup> Thus, he did not demonstrate clear evidence of error in the denial of his schedule award claim.<sup>24</sup>

### **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.

---

<sup>19</sup> *J.J.*, Docket No. 13-1363 (issued November 6, 2013).

<sup>20</sup> *See A.C.*, Docket No. 18-0201 (issued June 29, 2018); *see also G.B.*, Docket No. 13-1557 (issued October 29, 2013).

<sup>21</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5 (February 2016).

<sup>22</sup> *See W.R.*, Docket No. 09-2336 (issued June 22, 2010).

<sup>23</sup> *J.T.*, Docket No. 10-0313 (issued February 24, 2010).

<sup>24</sup> *B.B.*, Docket No. 08-0232 (issued August 7, 2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 31, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 2018  
Washington, DC

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

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

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