

ISSUE

The issue is whether OWCP properly 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.

FACTUAL HISTORY

On December 5, 2016 appellant, then a 60-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on November 30, 2016 she tripped over a parking block and fell to the ground, sustaining injuries to her right knee, left hand, left knee, left shoulder, and left side of her neck, while in the performance of duty. By decision dated March 15, 2017, OWCP accepted the claim for contusion of left knee and lumbago with sciatica, right side temporary aggravation.³

On August 31, 2017 appellant filed claims for compensation (Form CA-7) for wage loss on August 8 and 16, 2017. She subsequently filed additional Form CA-7 claims for compensation for wage loss on September 11, 12, 18, and 19, 2017.

An August 16, 2017 diagnostic report was provided documenting findings of a right knee magnetic resonance imaging (MRI) scan. In a September 11, 2017 medical report, Dr. Eric C. Marshall, Board-certified in family medicine, reported that appellant had fallen on November 30, 2016 and had been evaluated for her back. Appellant was requesting evaluation of her right knee due to complaints of continued pain. Dr. Marshall diagnosed right knee pain.

In a September 19, 2017 medical report, Dr. Easton Manderson, a Board-certified orthopedic surgeon, documented treatment for right knee pain. He reported that the August 16, 2017 right knee MRI scan revealed a torn medial meniscus of the posterior horn, effusion, and moderate chondromalacia of the patellofemoral joint.

OWCP referred appellant to Dr. D. Burke Haskins, a Board-certified orthopedic surgeon, for a second opinion examination pertaining to the nature and extent of her work-related injuries. In a report dated October 31, 2017, Dr. Haskins opined that appellant's right knee condition was unrelated to the November 30, 2016 employment injury because there was no documentation of an evaluation or injury of her right knee until long after the incident occurred, and that changes noted on her MRI scan of the right knee appeared to be degenerative in nature.

By decision dated November 29, 2017, OWCP denied appellant's claim for compensation for wage loss on August 16, and September 11 and 19, 2017. It concluded that his right knee condition was not causally related to the accepted employment injury of November 30, 2016.

On March 7, 2018 appellant requested reconsideration of OWCP's November 29, 2017 decision. Accompanying the appeal request form were copies of the November 30, 2016 Form

³ The record indicates that appellant stopped work on January 31, 2017 and returned to work on March 4, 2017. OWCP paid her wage-loss compensation on the supplemental rolls.

CA-1 and August 16, 2017 right knee MRI scan report. Appellant also submitted numerous medical reports documenting treatment for her lumbar and bilateral lower extremity conditions.

By decision dated May 30, 2018, OWCP denied appellant's request for reconsideration of the merits of the claim, finding that the request neither raised substantive legal questions, nor identified the grounds upon which the reconsideration was being requested.

On July 19, 2018 appellant again requested reconsideration and resubmitted the September 19, 2017 medical report by Dr. Manderson. She also submitted new medical reports documenting treatment for her conditions.

By decision dated October 17, 2018, OWCP denied appellant's request for reconsideration of the merits of the claim, finding that the request neither raised substantive legal questions, nor included new and relevant evidence.

OWCP continued to receive medical evidence related to appellant's current medical treatment, as well as duplicate reports dated August 16 and September 19, 2017. It also received a January 9, 2017 report not previously of record from Dr. Marshall. In the January 9, 2017 report, Dr. Marshall related that appellant had fallen on November 30, 2016 and landed on both knees. He related that she complained of right knee pain which was running down to her foot. Dr. Marshall referred appellant to an orthopedic surgeon for treatment of her right knee condition.

Appellant again requested reconsideration on January 28, 2019, arguing that Dr. Haskins failed to provide a real examination pertaining to her right knee condition and did not review the medical documentation she provided him during her evaluation. She further asserted that she had reported a right knee injury since the onset of the incident which was reflected on her Form CA-1 and the medical reports of her attending physicians, but that her right knee condition was only diagnosed on September 19, 2017.

By decision dated April 26, 2019, OWCP denied appellant's January 28, 2019 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.⁴ This discretionary authority, however, is subject to certain restrictions. For instance, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.⁵ Timeliness is determined by the document receipt date (*i.e.*,

⁴ 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁵ 20 C.F.R. § 10.607(a).

the “received date” in OWCP’s Integrated Federal Employees’ Compensation System).⁶ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁷

When a request for reconsideration is untimely, OWCP undertakes a limited review to determine whether the request demonstrates clear evidence that OWCP’s most recent merit decision was in error.⁸ OWCP’s procedures provide that it will reopen a claimant’s case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the claimant’s request for reconsideration demonstrates “clear evidence of error” on the part of OWCP.⁹ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹⁰

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹¹ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence which does not raise a substantial question concerning the correctness of OWCP’s decision is insufficient to demonstrate clear evidence of error. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. 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. To demonstrate 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 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

ANALYSIS

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.

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

⁷ *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁸ *See* 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4 2018); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁹ *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also* 20 C.F.R. § 10.607(b); *supra* note 6 at Chapter 2.1602.5 (February 2016).

¹⁰ *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

¹¹ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 6 at Chapter 2.1602.5(a) (February 2016).

¹² *J.W.*, *supra* note 10; *Robert G. Burns*, 57 ECAB 657 (2006).

OWCP's regulations¹³ and procedures¹⁴ establish a one-year time limitation for requesting reconsideration, which begins on the date of the original OWCP merit decision. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.¹⁵ The most recent merit decision was OWCP's November 29, 2017 decision, which denied appellant's claim for wage-loss compensation on August 16 and September 11, and 19, 2017. OWCP found that the medical reports provided for the dates at issue only referenced a right knee condition, which was not accepted as a work-related injury. As appellant's request for reconsideration was not received by OWCP until January 28, 2019, more than one year after the November 29, 2017 decision, it was untimely filed.¹⁶

In support of her untimely request for reconsideration, appellant argued that her initial claim and medical records documented her right knee condition. While she had initially noted a right knee injury on her claim form, and the January 9, 2017 report from Dr. Marshall indicated that appellant had sought treatment for her right knee condition, this does not raise a substantial question concerning the correctness of OWCP's November 29, 2017 merit decision, which denied the claim based upon lack of causal relationship. Even a detailed, well-rationalized medical report, which would have created a conflict in medical opinion requiring further development if submitted prior to issuance of the denial decision, does not constitute clear evidence of error.¹⁷

Appellant has not submitted any argument or evidence to demonstrate clear evidence of error in OWCP's November 29, 2017 decision. The Board, thus, finds that OWCP properly found that appellant's request for reconsideration failed to demonstrate clear evidence of error.¹⁸

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.

¹³ *F.N.*, Docket No. 18-1543 (issued March 6, 2019); 20 C.F.R. § 10.607(a); *see Alberta Dukes*, 56 ECAB 247 (2005).

¹⁴ *Supra* note 6 at Chapter 2.1602.4 (February 2016); *see L.A.*, Docket No. 19-0471 (issued October 29, 2019); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

¹⁵ *J.W.*, *supra* note 10; *Robert F. Stone*, 57 ECAB 292 (2005).

¹⁶ 20 C.F.R. § 10.607(b); *see L.A.*, *supra* note 14; *Debra McDavid*, 57 ECAB 149 (2005).

¹⁷ *E.B.*, Docket No. 18-1091 (issued December 28, 2018); *D.G.*, 59 ECAB 455 (2008); *L.L.*, Docket No. 13-1624 (issued December 5, 2013).

¹⁸ *See J.D.*, Docket No. 18-1765 (issued June 11, 2019).

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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