

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 October 25, 2016 appellant, then a 52 year-old electroplater, filed a traumatic injury claim (Form CA-1) alleging that on January 11, 2016 she sustained injury to her left knee when she slipped and fell in a parking lot while in the performance of duty. She did not stop work.

In a development letter dated October 27, 2016, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. It also requested that the employing establishment provide additional evidence including comments on whether the alleged injury occurred on employing establishment premises and whether the parking facilities were owned, controlled, or managed by the employing establishment. No response was received.

By decision dated December 5, 2016, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 27, 2017 appellant requested reconsideration. In support of her request, she submitted a January 21, 2016 witness statement, wherein appellant's coworker, M.C., noted that she was walking with appellant and R.G., another coworker, to a parking lot on January 11, 2016 when appellant fell and hit the pavement hard. She further related that she heard a loud pop. Appellant informed them that the uneven pavement caused her to fall.

In another witness statement of even date, R.G. similarly noted that appellant fell and hit the uneven concrete hard, with a snapping sound. He related that he thought she might have broken her leg due to the loud pop.

In a February 2, 2016 Occupational Safety and Health Administration (OSHA) incident report, it noted that on January 11, 2016 appellant sustained cuts, laceration, and puncture to the left side of her left knee when she fell on uneven pavement while walking to her vehicle.

In a February 4, 2016 medical report, Dr. Blane Graves, Board-certified in family medicine, noted some of appellant's medication history and provided findings on physical examination.

In a March 29, 2017 medical report, Dr. Darius F. Mitchell, a Board-certified orthopedic surgeon, indicated that appellant was under his care and noted her light-duty restrictions for the next three months.

OWCP also received an October 8, 2017 response to its October 27, 2017 factual development questionnaire. Appellant indicated that, while walking on January 11, 2016, she tripped and fell on uneven pavement, with her left knee striking the pavement first and then her left palm. She immediately experienced pain in her left knee and lacerations to her left palm, and she had difficulty getting to her feet. Appellant indicated that her left knee swelled and bearing weight was painful. She treated the knee with a heating pad at home. Appellant reported the January 11, 2016 incident to her supervisor the next day, but she was told by an employing establishment injury compensation specialist to wait on filing the Form CA-1. She related that Dr. Sharon Evers, a Board-certified occupational medicine physician, initially examined her on January 12, 2016 and that Dr. Mitchell subsequently diagnosed a meniscus tear in the left knee. Appellant alleged that she also sought a second opinion from Dr. Ethan Schock, a Board-certified orthopedic surgeon, who concluded that the nature of her meniscus tear was consistent with a fall and twisting injury with a direct blow to the knee.

Appellant submitted physical therapy notes dated March 25 to April 28, 2016.

In a November 28, 2017 letter, the employing establishment challenged appellant's claim, contending that she failed to produce medical documentation establishing a valid medical diagnosis causally related to the claimed January 11, 2016 employment incident. It noted that on February 4, 2016 she informed Dr. Graves that her left knee pain had actually started from a car accident a few years ago. Additionally, the employing establishment noted that Dr. Mitchell, in his March 29, 2017 medical report, did not address anything pertaining to a work-related injury or the reason appellant sought treatment with him.

By decision dated January 25, 2018, OWCP modified the December 5, 2016 decision, finding that appellant had established the factual component of her claim. However, appellant's claim remained denied as the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted January 11, 2016 employment incident.

On January 28, 2019 appellant requested reconsideration of the January 25, 2018 decision.

In a statement dated January 23, 2019, appellant asserted that she was submitting medical documentation proving that the fall in the employing establishment's parking lot was the direct cause of a meniscal tear in her left knee. No further evidence was received.

By February 12, 2019 decision, 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.³ 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

³ 5 U.S.C. § 8128(a); *see A.B.*, Docket No. 19-1539 (issued January 27, 2020); *J.S.*, Docket No. 19-1203 (issued January 22, 2020); *M.E.*, Docket No. 18-1497 (issued March 1, 2019).

decision for which review is sought.⁴ Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the integrated Federal Employees' Compensation System (iFECS).⁵ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁶

OWCP may not deny a reconsideration request solely because it was untimely filed. When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error.⁷ If an application demonstrates clear evidence of error, OWCP will reopen the case for merit review.⁸

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.⁹ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.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 show that the evidence could be construed so as to produce a contrary conclusion.¹² 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.¹³ To demonstrate clear evidence of error, 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.¹⁴

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.¹⁵ The claimant must present evidence which on its face shows that OWCP made an error. Evidence such as a detailed, well-rationalized medical report which, if submitted before

⁴ 20 C.F.R. § 10.607(a); *L.F.*, Docket No. 19-0324 (issued January 2, 2020); *L.H.*, Docket No. 19-1174 (issued December 2019).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

⁶ See *E.H.*, Docket No. 19-0859 (issued December 10, 2019); *M.E.*, *supra* note 3; *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁷ See 20 C.F.R. § 10.607(b); *A.B.* and *M.E.*, *supra* note 3; *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁸ *Supra* note 5 at Chapter 2.1602.5 (February 2016); *G.G.*, Docket No. 18-1074 (issued January 7, 2019); see also *id.* at § 10.607(b).

⁹ *A.A.*, Docket No. 19-1219 (issued December 10, 2019); *J.F.*, Docket No. 18-1802 (issued May 20, 2019).

¹⁰ *Id.*; see also *L.W.*, Docket No. 19-1367 (issued December 19, 2019); *Leona N. Travis*, 43 ECAB 227 (1999).

¹¹ *J.F.*, *supra* note 9; *A.A.*, *supra* note 9; *Jimmy L. Day*, 48 ECAB 652 (1997).

¹² *Id.*

¹³ *Id.*

¹⁴ *J.F.*, *supra* note 9; *M.E.*, *supra* note 3; *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁵ See *G.G.*, *supra* note 8.

the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.¹⁶ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁷

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim as it was untimely filed and failed to demonstrate clear evidence of error.

OWCP's regulations¹⁸ and procedures¹⁹ establish a one-year time limitation for requesting reconsideration, which begins on the date of the last OWCP merit decision. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.²⁰ As appellant's request for reconsideration was not received by OWCP until January 28, 2019, more than one year after the January 25, 2018 decision, the Board finds that it was untimely filed.²¹ Consequently, she must demonstrate clear evidence of error on the part of OWCP.

The Board further finds that appellant has failed to demonstrate clear evidence of error on the part of OWCP in its last merit decision. OWCP denied her traumatic injury claim, finding that she had not submitted medical evidence including a diagnosis by a qualified physician in connection with the accepted January 11, 2016 employment incident.²²

With her request for reconsideration, appellant submitted a January 23, 2019 statement, asserting that she had submitted further medical evidence, including Dr. Schock's report showing a diagnosis causally related to the accepted January 11, 2016 employment incident. The record, however, shows that OWCP had not received said evidence at the time of its final decision. Thus, the Board finds that the January 23, 2019 statement alone does not raise a substantial question as to the correctness of OWCP's last merit decision.²³

Clear evidence of error is intended to represent a difficult standard.²⁴ As previously noted, the Board makes an independent determination of whether a claimant has submitted clear evidence

¹⁶ *Supra* note 5 at Chapter 2.1602.5(a) (February 2016); *J.F.*, *supra* note 9; *J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹⁷ *See Y.J.*, Docket No. 18-0495 (issued December 10, 2019); *M.E.*, *supra* note 3.

¹⁸ *Supra* note 3; *see Alberta Dukes*, 56 ECAB 247 (2005).

¹⁹ *Supra* note 5 at Chapter 2.1602.4 (February 2016); *see Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

²⁰ 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

²¹ *See C.T.*, Docket No. 14-0410 (issued July 22, 2015) (reconsideration request received three days later is untimely).

²² *A.B.*, *supra* note 3.

²³ *See C.A.*, Docket No. 19-0597 (issued October 4, 2019).

²⁴ *G.D.*, Docket No. 19-0815 (issued January 16, 2020); *K.E.*, Docket No. 19-1020 (issued November 5, 2019).

of error on the part of OWCP.²⁵ As appellant has not submitted such evidence, the Board finds that she has not demonstrated clear evidence of error.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim as it was untimely filed and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 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

²⁵ *W.R.*, Docket No. 18-1042 (issued February 12, 2019); *R.C.*, Docket No. 17-0198 (issued January 28, 2019).