

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>B.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0465</b>
	)	<b>Issued: November 19, 2020</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Chicago, IL, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 23, 2019 appellant filed a timely appeal from a June 26, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated March 14, 2018, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

**FACTUAL HISTORY**

On March 20, 2017 appellant, then a 52-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she experienced leg pain and a swollen knee after delivering her mail route in an area where snow had not been shoveled. She indicated that she first

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

became aware of her condition on March 17, 2017 and realized its relation to her federal employment on March 13, 2017. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on March 20, 2017 and first reported her condition to her supervisor on March 27, 2017.

In a March 24, 2017 note, Dr. Khojasteh Bahmanbeigi, a Board-certified family practitioner, noted that appellant presented for a recheck for moderate knee pain exacerbated by knee flexion and walking. He noted that on physical examination she had right knee swelling and walked with a slight limp. Dr. Bahmanbeigi assessed pain and swelling of the right knee and effusion of right bursa. He returned appellant to modified-duty work with restrictions. In a work activity status report dated March 31, 2017, Dr. Abbas F. Al-Saraf, Board-certified in family medicine, diagnosed unspecified osteoarthritis and effusion of the bilateral knees.

OWCP also received physical therapy notes dated March 21 to 31, 2017.

In a development letter dated April 6, 2017, 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 seeking further details regarding the claimed March 13, 2017 employment incident. In a separate letter of the same date, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to respond.

On April 5 and 19, 2017 Dr. Ben Tseng, a Board-certified internist, noted that appellant was unable to work from April 5 to May 3, 2017. In an attending physician's report (Form CA-20) dated April 11, 2017, he noted that on March 13, 2017 appellant slipped in snow and fell on her right anterior knee. Dr. Tseng diagnosed right patella contusion and underlying osteoarthritis flare-up. He checked a box marked "Yes" indicating that her condition was caused or aggravated by an employment activity. In duty status reports (Form CA-17) dated April 11 and June 21, 2017, Dr. Tseng noted that appellant sustained an acute fall on left patella and diagnosed knee injury, patella contusion.

In a June 21, 2017 letter, Dr. Tseng indicated that she worked as a mail carrier for 18 years in all seasons. He diagnosed underlying knee osteoarthritis and a right knee patellar cartilage and trochlear cartilage injury.

By decision dated June 30, 2017, OWCP denied appellant's occupational disease claim finding that the evidence submitted was insufficient to establish that the alleged employment factors occurred as described as she had not responded to its development questionnaire. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

On December 15, 2017 appellant requested reconsideration of OWCP's June 30, 2017 decision. In an accompanying statement dated December 13, 2017, she reiterated that she filed a Form CA-2 for an injury sustained on March 17, 2017 as a result of delivering mail on March 13, 2017 in the snow. Appellant explained that she was attempting to pull her mail cart through heavy snow which caused her to fall and injure her knee. She noted that at the end of the day she felt left leg pain and a few days later she could not stand. Appellant asserted that the employing establishment had incorrectly advised her to file a Form CA-2 even though her claim was actually for a traumatic injury.

In support of her reconsideration request, appellant submitted a copy of her completed development questionnaire and indicated that on March 13, 2017 she was performing her regular letter carrier duties while delivering mail on her assigned mail route when she slipped “and fell on my knees while pushing my mail cart through the heavy snow.” She noted that she had been working this mail route for two years. Appellant explained that she had not reported the March 13, 2017 injury to her supervisor until March 17, 2017 as she initially thought it was a minor injury and continued to work until she was unable to stand or walk. She noted that the claim was filed as a Form CA-2 occupational disease claim, but should have been filed as a CA-1 form traumatic injury claim because of the slip and fall. Appellant also alleged that she had no outside activities or hobbies.

OWCP also received an April 20, 2017 report wherein Dr. Tseng noted that appellant had slipped and fallen on her right anterior knee on March 13, 2017 and stopped work on March 17, 2017. In a September 27, 2017 report, Dr. Tseng indicated that, while on her mail route on March 13, 2017, appellant slipped in the snow and fell on the front of her right knee. Dr. Tseng noted that a magnetic resonance imaging scan revealed cartilage injuries which were caused by appellant’s injury.

In a Form CA-20 report dated September 27, 2017, Dr. Tseng again noted that on March 13, 2017 appellant slipped in snow and fell on her right anterior knee. He diagnosed underlying osteoarthritis and acute cartilage injury of the right knee. Dr. Tseng indicated by checking a box marked “Yes” that appellant’s condition was caused or aggravated by an employment activity. He explained that it resulted from a fall that occurred at work.

By decision dated March 14, 2018, OWCP denied modification of the June 30, 2017 decision. It found that “the documentation fails to clearly establish work factors alleged to have contributed to the development of the claimed condition.”

On March 28, 2019 appellant requested reconsideration and submitted additional evidence. In a statement dated December 7, 2018, she alleged that she sustained a traumatic injury, not an occupational disease, and that the employing establishment improperly required that her claim be filed on a Form CA-2. Appellant also asserted that additional reports from Dr. Tseng and Dr. Ankur Chhadia, a Board-certified orthopedist, provide a detailed description of her injury, and a complete factual and medical background, with medical rationale to establish her claim.

In a September 10, 2018 report, Dr. Chhadia treated appellant for right knee pain secondary to a work injury occurring on March 13, 2017. Appellant reported pushing a cart full of mail when she slipped on snow and ice and fell, injuring her right knee. Dr. Chhadia diagnosed right knee osteoarthritis. In reports dated October 2 and December 4, 2018, he diagnosed right knee osteoarthritis. On December 3, 2018 Dr. Chhadia treated appellant on September 10 and October 2, 2018 for right knee pain. Appellant reported that she was pushing a cart full of mail in the snow and ice when she slipped and fell injuring her right knee. Dr. Chhadia diagnosed right knee osteoarthritis and opined to a reasonable degree of medical certainty that the occupational injury did result in a permanent aggravation of underlying right knee osteoarthritis.

In a report dated October 2, 2018, Dr. Tseng diagnosed acute cartilage injury of the right knee, sequela. Appellant reported injuring her right knee on March 13, 2017 when she was pushing her cart across a street through slushy snow and over a curb when her feet slipped causing

her to fall forward onto both knees. Dr. Tseng opined that her March 13, 2017 injury produced the cartilage injuries to her right knee.

By decision dated June 26, 2019, OWCP denied appellant's 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.<sup>2</sup> 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.<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> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>5</sup>

When a request for reconsideration is untimely, OWCP undertakes a limited review to determine whether the application presents clear evidence that OWCP's final merit decision was in error.<sup>6</sup> Its procedures provide that OWCP 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 shows "clear evidence of error" on the part of OWCP.<sup>7</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>8</sup> The evidence must be positive, precise and explicit and must manifest on its face that OWCP committed an error.<sup>9</sup> Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.<sup>10</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>11</sup> To demonstrate clear evidence of error, the evidence submitted

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<sup>2</sup> See 5 U.S.C. § 8128(a); *M.E.*, Docket No. 18-1497 (issued March 1, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

<sup>3</sup> 20 C.F.R. § 10.607(a).

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

<sup>5</sup> *F.N.*, Docket No. 18-1543 (issued March 6, 2019); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>6</sup> *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *Leon J. Modrowski*, 55 ECAB 196 (2004); *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>7</sup> *W.R.*, Docket No. 18-1042 (issued February 12, 2019); see *Gladys Mercado*, 52 ECAB 255 (2001). Section 10.607(b) provides: "OWCP will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of [it] in its most recent merit decision. The application must establish, on its face, that such decision was erroneous." 20 C.F.R. § 10.607(b).

<sup>8</sup> *F.N.*, *supra* note 5; see *Darletha Coleman*, 55 ECAB 143 (2003); *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>9</sup> *M.E.*, *supra* note 2; see *Pasquale C. D'Arco*, 54 ECAB 560 (2003); *Leona N. Travis*, 43 ECAB 227 (1991).

<sup>10</sup> See *Leon J. Modrowski*, *supra* note 6; *Jesus D. Sanchez*, *supra* note 6.

<sup>11</sup> See *Leona N. Travis*, *supra* note 9.

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.<sup>12</sup>

The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of OWCP such that OWCP abused its discretion in denying merit review in the face of such evidence.<sup>13</sup>

### ANALYSIS

The Board finds that OWCP properly determined that appellant's request for reconsideration was untimely filed. The last merit decision of record was OWCP's March 14, 2018 decision. As appellant's request for reconsideration was received by OWCP on March 28, 2019, more than one year after the March 14, 2018 merit decision, it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in denying her claim.<sup>14</sup>

The Board further finds that the evidence submitted in support of appellant's untimely request for reconsideration raises a substantial question as to the correctness of OWCP's March 14, 2018 merit decision and is sufficient to demonstrate clear evidence of error.<sup>15</sup>

Appellant has alleged on reconsideration that she sustained a traumatic injury on one day and that the employing establishment improperly required that her claim be filed on a Form CA-2 for an occupational disease. She has consistently, throughout the development of her claim, asserted that her claim was one for a traumatic injury. In support of her March 28, 2019 reconsideration request, appellant submitted reports from Drs. Chhadia and Tseng who treated her for a right knee injury which occurred on March 13, 2017 when she was pushing a cart full of mail and slipped on snow and ice and fell. These reports support that her injury occurred on March 13, 2017 as alleged. A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift.<sup>16</sup> An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.<sup>17</sup> Appellant's claim is therefore one for a traumatic injury and not an occupational disease.

Federal (FECA) Procedure Manual provides that, while a submission of an incorrect form is a technical error, it is improper to deny a case because a claimant failed to submit the correct

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<sup>12</sup> *W.K.*, Docket No. 18-1260 (issued February 5, 2019); *Leon D. Faidley, Jr.*, *supra* note 5.

<sup>13</sup> See *George C. Vernon*, 54 ECAB 319 (2003); *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

<sup>14</sup> *Supra* note 4. See also *Debra McDavid*, 57 ECAB 149 (2005).

<sup>15</sup> See *S.M.*, Docket No. 18-1499 (issued February 5, 2020) (OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation, if the claimant's request for reconsideration shows clear evidence of error on the part of the OWCP).

<sup>16</sup> 20 C.F.R. § 10.5(ee).

<sup>17</sup> *Id.* at § 10.5(q).

form. Rather, OWCP should convert the incorrect claim form to the correct type and notify the claimant and the employing establishment that the claim has been converted and explain the reasons for the conversion.<sup>18</sup>

The Board therefore finds that she has raised a substantial question as to the correctness of the March 14, 2018 merit decision and, thus, has demonstrated clear evidence of error.

The Board will reverse OWCP's June 26, 2019 decision and remand the case for an appropriate decision on the merits of appellant's claim.

### **CONCLUSION**

The Board finds that appellant has demonstrated clear evidence of error in OWCP's March 14, 2018 merit decision and, thus, OWCP improperly denied her request for reconsideration of the merits of her claim.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 26, 2019 decision of the Office of Workers' Compensation Programs is reversed and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 19, 2020  
Washington, DC

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

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

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

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<sup>18</sup> *Supra* note 4 at Chapter 2.800.3(c)(2) (June 2011).