

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

S.C., Appellant	)	
	)	
and	)	<b>Docket No. 21-0340</b>
	)	<b>Issued: July 28, 2021</b>
	)	
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>COMMUNITY BASED OUTPATIENT CLINIC,</b>	)	
<b>Jackson, TN, Employer</b>	)	
	)	

*Appearances:*  
Emma Cull, for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 4, 2020 appellant, through his representative, filed a timely appeal from a July 8, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Board's docketed the appeal as No. 21-0340.

On March 18, 2019 appellant, then a 54-year-old licensed practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on May 9, 2018 his left hip popped and he sustained lumbar pain which radiated to his left hip, thigh, and knee when he stood up from a chair while in the performance of duty.

After initial development of the claim, by decision dated April 30, 2019, OWCP denied appellant's claim, finding the medical evidence of record was insufficient to establish a diagnosed

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

condition causally related to the May 9, 2019 incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP received an x-ray report dated May 31, 2018 which related findings of left hip nondisplaced tear and moderate arthrosis in the left hip.

Appellant submitted medical reports dated October 15 and November 19, 2019, and January 21, 2020 from Dr. Stacey Hunt-Okolo, an obstetrician and gynecologist. Dr. Hunt-Okolo related that on May 9, 2018, appellant heard a loud pop in his left hip as he stood up from his desk chair. She diagnosed left hip avascular necrosis, tear of labrum, effusion, unilateral primary osteoarthritis, left knee chondromalacia patellae, and a complex tear medial meniscus. Dr. Hunt-Okolo opined that appellant sustained a traumatic work injury which was caused by the shearing force seen with twisting the hip while simultaneously standing which created significant stress at the left hip joint. She also stated that his left knee injury was caused by forcefully twisting his left bent knee as he quickly stood up from his chair. In a report dated February 25, 2020, Dr. Hunt-Okolo diagnosed left hip injuries and left knee injuries. She also stated that the injuries were directly and causally related to appellant's work duties.

On May 13, 2020 appellant, through his representative, requested reconsideration of OWCP's April 30, 2019 decision, which the representative mailed to the London, KY office.

By decision dated June 12, 2020, OWCP denied appellant's request for reconsideration, finding it was untimely filed and failed to demonstrate clear evidence of error.

On July 2, 2020 appellant, through a representative, requested reconsideration. Appellant's representative argued that she did not know that the request for reconsideration should have been sent to the district office in San Antonio, TX, instead of London KY, and that if the request had not been rerouted it would have arrived on time.

By decision dated July 8, 2020, OWCP denied appellant's request for reconsideration finding that he neither raised substantive legal questions, nor submitted new and relevant evidence.

The Board finds that the case is not in posture for decision.

OWCP's regulations<sup>2</sup> and procedures<sup>3</sup> establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.<sup>4</sup> The most recent merit decision was OWCP's April 30, 2019 decision. As appellant's request for reconsideration was received on July 2, 2020, more than one year after the April 30, 2019 merit

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<sup>2</sup> 20 C.F.R. § 10.607(a); *see J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Alberta Dukes*, 56 ECAB 247 (2005).

<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

<sup>4</sup> 20 C.F.R. § 10.607(b); *see A.M.*, Docket No. 20-0143 (issued October 28, 2020); *Debra McDavid*, 57 ECAB 149 (2005).

decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in its April 30, 2019 decision.<sup>5</sup>

In denying appellant's reconsideration request, OWCP did not review the request under the clear evidence of error standard and it did not address appellant's argument that his prior request for reconsideration, received by OWCP on May 13, 2020 was untimely as it was rerouted from London, KY to San Antonio, TX. Rather, it applied the standard of review for timely requests for reconsideration. As OWCP applied the wrong standard of review to the untimely request for reconsideration, the Board will set aside OWCP's July 8, 2020 decision and remand the case for proper review under the clear evidence of error standard as required by regulations.<sup>6</sup>

**IT IS HEREBY ORDERED THAT** the July 8, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further review under the clear evidence of error standard.

Issued: July 28, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>5</sup> *Id.* at § 10.607(b); *see M.W.*, Docket No. 17-0892 (issued May 21, 2018); *see S.M.*, Docket No. 16-0270 (issued April 26, 2016).

<sup>6</sup> *See* 20 C.F.R. § 10.607(b). *See L.D.*, Docket No. 15-0865 (issued October 6, 2015).