



unloading her postal vehicle and reaching for packages, and one of the packages became stuck, while in the performance of duty. She indicated that she experienced neck and lower back pain. Appellant stopped work on the date of the claimed injury.

Appellant submitted reports from health care providers, including a January 22, 2019 duty status report (Form CA-17) from a physician assistant with an illegible signature who listed the date of injury as November 13, 2018 and diagnosed muscle strain.

In a February 1, 2019 development letter, OWCP notified 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. By separate development letter of even date, OWCP requested additional information from the employing establishment. It afforded both parties 30 days to submit the necessary evidence.

In a February 11, 2019 response to the provided questionnaire, appellant indicated that she was injured unloading her postal vehicle in the employing establishment parking lot when she was on her knees in the back of her jeep trying to retrieve a large priority package that was stuck behind the seat. She advised that she sought a medical appointment with her physician on the day of the claimed injury and was seen on November 15, 2018. Appellant explained that she delayed in filing the claim because she was not aware she had to file anything at the time of the claimed employment incident and thought the employing establishment would handle the matter.

Appellant submitted a January 31, 2019 return to duty report from Dr. Adam Pascoe, a Board-certified occupational medicine specialist, who listed the “nature of illness” as lumbar strain and bilateral sacroiliitis, and recommended work restrictions.

By decision dated March 4, 2019, OWCP denied appellant’s traumatic injury claim, finding that the evidence of record was insufficient to establish a November 13, 2018 employment incident. Consequently, it found that the requirements had not been met to establish an injury as defined by FECA.

On March 18, 2019 appellant requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review.

Appellant submitted additional medical evidence in support of her claim, including reports from Dr. Pascoe dated January 31 through July 11, 2019. In his January 31, 2019 report, Dr. Pascoe referenced the November 13, 2018 incident and detailed the findings of his physical examination. He diagnosed lumbar strain and bilateral sacroiliac joint dysfunction, as well as several conditions he identified as nonwork-related, including lumbar spondylosis, osteoarthritis, psoriatic arthritis, and rheumatoid arthritis. Dr. Pascoe noted, “[t]o a reasonable degree of medical certainty, her above diagnoses listed as lumbar strain and sacroiliac dysfunction are secondarily related to her work environment.”

By decision dated July 22, 2019, OWCP’s hearing representative set aside the March 4, 2019 decision and remanded the case to OWCP for further development. The hearing representative found that appellant had established the November 13, 2018 employment incident in the form of attempting to lift a heavy package, which became stuck. The hearing representative directed OWCP to refer appellant for a second opinion examination to evaluate whether she

sustained a diagnosed condition causally related to the accepted November 13, 2018 employment incident.

On January 22, 2020 OWCP referred appellant for a second opinion examination with Dr. Peter A. Feinstein, a Board-certified orthopedic surgeon. It requested that Dr. Feinstein provide an opinion regarding whether appellant sustained an injury casually related to the accepted November 13, 2018 employment incident.

Appellant submitted additional medical evidence in support of her claim, including a January 22, 2020 report from Dr. Pascoe who diagnosed bilateral sacroiliac joint dysfunction and recommended permanent work restrictions.

In a February 24, 2020 report, Dr. Feinstein discussed appellant's factual and medical history, including the circumstances of the accepted November 13, 2018 employment incident. He detailed the findings of his physical examination and found that appellant's current symptoms were related to psoriatic arthritis. Dr. Feinstein concluded that this diagnosed condition was not causally related to the accepted November 13, 2018 employment incident, but rather was preexisting in nature.

By decision dated March 27, 2020, OWCP denied appellant's claim for a November 13, 2018 employment injury, finding that the weight of the medical opinion evidence rested with the opinion of Dr. Feinstein.

On April 24, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. She submitted additional medical evidence in support of her claim, including reports from early-2020 of Dr. Pascoe who reported physical examination findings and diagnosed work-related lumbar strain and bilateral sacroiliac joint dysfunction.

By decision dated August 6, 2020, OWCP's hearing representative affirmed the March 27, 2020 decision.

In an August 3, 2021 letter received by OWCP on August 4, 2021, appellant requested "an extension on my case" because COVID-19 restrictions made it difficult to obtain medical evidence.

In an August 23, 2021 letter received by OWCP the same day, appellant requested reconsideration of the March 27, 2020 decision. She argued that OWCP should have accepted her claim because she had been approved for disability retirement benefits and she had been found to be disabled by the Social Security Administration (SSA).

Appellant submitted a September 16, 2020 report from Dr. Pascoe who reported the findings of his physical examination and diagnosed bilateral sacroiliac joint dysfunction, subsequent encounter. He noted, "[t]o a reasonable degree of medical certainty, [appellant's] occupation and specifically her mechanism of injury is a competent medical cause of her current symptoms. She has a preexisting condition that being psoriatic arthritis."

By decision dated November 18, 2021, 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 of the request for reconsideration as indicated by the received date in the 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>

OWCP may not deny a request for reconsideration 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.<sup>6</sup> If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review.<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 that 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. This entails a limited review by OWCP of how the evidence submitted with the request for reconsideration bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.<sup>11</sup> To demonstrate clear evidence of error, the evidence submitted must be of sufficient probative value to shift the weight

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<sup>2</sup> 5 U.S.C. § 8128(a); *see also* *A.B.*, Docket No. 19-1539 (issued January 27, 2020); *W.C.*, 59 ECAB 372 (2008).

<sup>3</sup> 20 C.F.R. § 10.607(a).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

<sup>5</sup> *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).

<sup>6</sup> *See* 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

<sup>7</sup> *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).

<sup>8</sup> *A.A.*, Docket No. 19-1219 (issued December 10, 2019); *J.F.*, Docket No. 18-1802 (issued May 20, 2019); *J.D.*, Docket No. 16-1767 (issued January 12, 2017); *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>9</sup> *J.D.*, Docket No. 19-1836 (issued April 6, 2020); *Leone N. Travis*, 43 ECAB 227 (1999).

<sup>10</sup> *S.W.*, Docket No. 18-0126 (issued May 14, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>11</sup> *T.N.*, Docket No. 18-1613 (issued April 29, 2020).

of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.<sup>12</sup>

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.<sup>13</sup> The claimant must present evidence which on its face shows that OWCP made an error.<sup>14</sup> Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.<sup>15</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>16</sup>

### ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration as it was untimely filed.

The last merit decision in this case was dated August 6, 2020. Appellant had one year from that decision to request reconsideration. As her request for reconsideration was not received by OWCP until August 23, 2021, more than one year after issuance of its August 6, 2020 merit decision, it was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in its August 6, 2020 decision.

The Board further finds that appellant has not demonstrated clear evidence of error.

On reconsideration, appellant argued that OWCP should have accepted her claim because she had been approved for disability retirement benefits and SSA determined she was disabled. However, the Board has held that the findings of other administrative bodies regarding the payment of benefits are not binding on OWCP.<sup>17</sup> The Board finds, therefore, that this argument does not raise a substantial question as to the correctness of OWCP's August 6, 2020 decision.<sup>18</sup>

In support of her reconsideration request, appellant submitted a September 16, 2020 report from Dr. Pascoe who reported the findings of his physical examination and diagnosed bilateral sacroiliac joint dysfunction, subsequent encounter. He noted that, "[t]o a reasonable degree of medical certainty, [appellant's] occupation and specifically her mechanism of injury is a competent

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<sup>12</sup> *J.M.*, Docket No. 19-1842 (issued April 23, 2020).

<sup>13</sup> *See supra* note 4 at Chapter 2.1602.5a (September 2020); *see also J.S.*, Docket No. 16-1240 (issued December 1, 2016).

<sup>14</sup> *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

<sup>15</sup> *Id.*

<sup>16</sup> *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

<sup>17</sup> *See D.I.*, 59 ECAB 158 (2007).

<sup>18</sup> *See supra* notes 9 and 11.

medical cause of her current symptoms. She has a preexisting condition that being psoriatic arthritis.”

As noted, clear evidence of error is intended to represent a difficult standard.<sup>19</sup> Even a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical evidence requiring further development is insufficient to demonstrate clear evidence of error. It is not enough to show that evidence could be construed so as to produce a contrary conclusion. Instead, the evidence must shift the weight in appellant’s favor.<sup>20</sup> As Dr. Pascoe failed to describe the November 13, 2018 employment incident in detail and failed to explain how it could have been responsible for appellant’s diagnosed sacroiliac joint condition, his report does not raise a substantial question concerning the correctness of OWCP’s August 6, 2020 decision.<sup>21</sup> Therefore, OWCP properly denied appellant’s request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

### 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.

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<sup>19</sup> See *supra* note 12.

<sup>20</sup> *M.E.*, Docket No. 18-1442 (issued April 22, 2019).

<sup>21</sup> See *S.F.*, Docket No. 09-0270 (issued August 26, 2009).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 18, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2022  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board