



knee when she stepped on an uneven sidewalk and twisted her left knee while in the performance of duty. She noted that she experienced immediate pain, which increased into the evening until she was unable to walk without a limp. Appellant stopped work on October 18, 2018 and returned to work on October 22, 2018.

In support of her claim, appellant submitted notes dated October 22 and 25, 2018 from Megan Foss, a physician assistant, as well as a note dated November 23, 2018 from Shannon Constantinides, a nurse practitioner, holding appellant off work intermittently from October 18 through November 23, 2018.

In a December 21, 2018 development letter, OWCP advised appellant of the deficiencies of her claim. It advised her of the type of evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a January 3, 2019 work excuse note, Ms. Constantinides advised that appellant be excused from work December 13 and 14, 2019 due to an exacerbation of acute knee pain that began in October 2018.

By decision dated February 1, 2019, OWCP denied appellant's traumatic injury claim, finding that she had not submitted medical evidence containing a medical diagnosis in connection with her accepted employment incident. It therefore concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive medical evidence, including an October 18, 2018 note from Dr. Alexios-Clark Constantinides, an osteopath specializing in family medicine, indicating that appellant related a history of stepping wrong and twisting her left knee two days prior. A physical examination of the left knee revealed mild swelling, a cyst, and popping with McMurray's test. Dr. Constantinides provided an assessment of acute pain of the left knee.

On October 31, 2018 appellant presented to Dr. Constantinides and complained of ongoing medial and superior knee pain with swelling in the posterior knee. On physical examination, Dr. Constantinides observed mild degenerative changes and intra-articular effusion, medial joint line tenderness, patellofemoral crepitus, and positive medial McMurray's sign. X-rays revealed a mild amount of medial compartment tibiofemoral joint space narrowing and mild-to-moderate patellofemoral joint space narrowing. Dr. Constantinides diagnosed primary osteoarthritis of both knees with acute exacerbation of pain in the left knee.

In notes dated November 16 and 23, 2018, Dr. Constantinides indicated that appellant's pain was likely related to underlying mild-to-moderate tricompartmental degenerative joint disease and degenerative meniscal tearing. He recommended magnetic resonance imaging (MRI) scan studies and a left knee injection.

In a March 13, 2019 report, Dr. Constantinides diagnosed internal derangement of the left knee, and continued to recommend a left knee MRI scan to evaluate for a possible medical meniscus tear.

On October 15, 2019 appellant requested reconsideration of OWCP's February 1, 2019 decision.

By decision dated January 10, 2020, OWCP modified its prior decision, finding that appellant had established a valid medical diagnosis. However, the claim remained denied, as the medical evidence of record was insufficient to establish causal relationship between her diagnosed medical conditions and the accepted October 16, 2018 employment incident.

OWCP continued to receive evidence, including a January 30, 2020 report from Dr. Constantinides indicating that appellant's condition was reflective of a likely medial meniscal tear, but an MRI scan was necessary in order to make a definitive diagnosis for appellant's claim. He described the October 16, 2018 employment incident as a pivot shift injury and opined that it had caused her injury and pain.

On January 14, 2021 appellant requested reconsideration of OWCP's January 10, 2020 decision.

By decision dated January 25, 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, *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 request demonstrates clear evidence that OWCP's most recent merit decision was in error.<sup>6</sup> 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

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<sup>2</sup> 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).

<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) (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).

OWCP.<sup>7</sup> In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.<sup>8</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>9</sup> 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 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>10</sup>

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard.<sup>11</sup> The claimant must present evidence which on its face demonstrates that OWCP made an error (for example, proof that a schedule award was miscalculated).<sup>12</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>13</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>14</sup>

### ANALYSIS

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

The last merit decision was issued on January 10, 2020. As appellant's request for reconsideration was not received by OWCP until January 14, 2021, more than one year after the time limitation, pursuant to 20 C.F.R. § 10.607(a), the Board finds that the request for

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<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 id.* at § 10.607(b); *supra* note 4 at Chapter 2.1602.5 (February 2016).

<sup>8</sup> *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>9</sup> *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 4 at Chapter 2.1602.5(a) (September 2020).

<sup>10</sup> *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

<sup>11</sup> *See supra* note 4 at Chapter 2.1602.5(a) (September 2020); *see also J.S.*, Docket No. 16-1240 (issued December 1, 2016).

<sup>12</sup> *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

<sup>13</sup> *Id.*

<sup>14</sup> *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

reconsideration was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in denying the claim.<sup>15</sup>

The Board further finds that appellant has not demonstrated clear evidence of error. In support of her untimely request for reconsideration, appellant submitted a January 30, 2020 report from Dr. Constantinides indicating that she likely had a medial meniscal tear, but an MRI scan was necessary in order to make a definitive diagnosis. The Board finds, however, that the submission of this report does not establish clear evidence of error as it does not raise a substantial question concerning the correctness of OWCP's January 10, 2020 merit decision. As noted, clear evidence of error is intended to represent a difficult standard.<sup>16</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>17</sup>

Accordingly, the Board finds that 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 January 14, 2021 request for reconsideration of the merits of her claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

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<sup>15</sup> 20 C.F.R. § 10.607(b); *S.C.*, Docket No. 20-1537 (issued April 14, 2021); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *see Debra McDavid*, 57 ECAB 149 (2005).

<sup>16</sup> *Supra* note 11.

<sup>17</sup> *T.G.*, Docket No. 22-0828 (issued December 28, 2022); *M.E.*, Docket No. 18-1442 (issued April 22, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 25, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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