

³ The Board notes that following the November 14, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

On April 16, 2016 appellant, then a 42-year old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on that day a passenger, who was holding a child, lost her balance and the child fell on her left knee while in the performance of duty. OWCP accepted the claim for left knee contusion, unspecified tear of unspecified meniscus, left knee, and derangement of unspecified medial meniscus of the left knee due to old tear or injury. Appellant stopped work on April 16, 2016. OWCP paid appellant wage-loss compensation on the supplemental rolls commencing June 2, 2016 and on its periodic compensation rolls effective June 23, 2019.⁴

By notice dated June 23, 2021, OWCP advised appellant that, under 5 U.S.C. § 8106 and 5 U.S.C. § 8115, it proposed to adjust her wage-loss compensation based on her ability to earn wages as a General Office Clerk, Department of Labor, Dictionary of Occupational Titles (DOT) No. 209.562-010, at the rate of \$360.00 per week. It noted that the position had been selected by appellant's vocational rehabilitation counselor and that a September 16, 2020 state labor market survey demonstrated that it was reasonably available in appellant's commuting area with an average weekly wage of \$360.00. OWCP informed appellant that the duties of the position were within the May 2, 2019 work restrictions recommended by her treating physician Dr. Nicole Forsythe, a Board-certified physiologist. It afforded her 30 days to submit evidence and argument challenging the proposed reduction.

In a July 23, 2021 letter, appellant's counsel responded to the proposed reduction.

By decision dated August 25, 2021, OWCP reduced appellant's wage-loss compensation, effective June 1, 2020, based on its determination that she was capable of earning wages in the constructed position of General Office Clerk. It found that the constructed position of General Office Clerk had wages of \$360.00 per week and had been shown by a labor market survey to have been reasonably available in appellant's commuting area. OWCP applied the principles set forth in the *Albert C. Shadrick*⁵ decision to determine the percentage of appellant's loss of wage-earning capacity (LWEC).

On August 25, 2022 appellant requested reconsideration and submitted additional evidence.

By decision dated November 14, 2022, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It noted that her reconsideration request was received August 25, 2022 but there was no evidence of a postmark for timely filing.

On appeal counsel contends the August 25, 2022 reconsideration request was timely.

The Board has duly considered the matter and finds that appellant's request for reconsideration was timely filed.

Section 10.607(a) of OWCP's implementing regulations provides that a request for reconsideration must be received by OWCP within one year of the date of the decision for which

⁴ Appellant received schedule awards for permanent impairment of her left lower extremity by OWCP decisions dated January 4, 2018, March 26, 2021, and April 1, 2022.

⁵ 5 ECAB 376 (1953). *See also* 20 C.F.R. § 10.403(d).

review is sought.⁶ One year following OWCP's August 25, 2021 merit decision was August 25, 2022. Because OWCP received her reconsideration request on August 25, 2022, the Board finds that it was timely filed.⁷ The clear evidence of error standard utilized by OWCP in its November 14, 2022 decision is appropriate only for untimely reconsideration requests.⁸ Therefore, the Board will set aside OWCP's November 14, 2022 decision and remand the case for an appropriate decision applying the correct standard for timely requests for reconsideration. Accordingly,

IT IS HEREBY ORDERED THAT the November 14, 2022 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this order of the Board.

Issued: November 2, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁶ 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4a (September 2020).

⁷ See *Order Remanding Case, S.J.*, Docket No. 23-0179 (issued May 23, 2023); *Order Remanding Case, B.W.*, Docket No. 20-1512 (issued August 24, 2021); *Order Remanding Case, J.H.*, Docket No. 18-1367 (issued July 17, 2019); *Order Remanding Case, C.B.*, Docket No. 13-1732 (issued January 28, 2014); *Steven E. Pratt*, Docket No. 93-443 (issued February 2, 1994).

⁸ See 20 C.F.R. § 10.607(b); see also *id.*