

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 July 2, 2020 appellant, then a 50-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 4, 2020 she sprained her right knee when she slipped and fell on a wet bathroom floor while in the performance of duty.³ She did not stop work.

In an attached statement, appellant explained that on June 4, 2020 at around 3:30 a.m. she slipped and fell on a wet bathroom floor, hitting her right knee.

In a hospital emergency department report dated June 4, 2020, Dr. Julie Scarpino, an emergency medicine physician, indicated that appellant presented after she slipped and fell at work and landed on her right hip. On physical examination, she observed right hip tenderness at the greater trochanter, decreased range of motion (ROM) of the right knee, and right knee edema with pain. Dr. Scarpino diagnosed knee pain. An after-visit summary report and discharge instructions sheet indicated that appellant was treated in the emergency room for right knee pain and discharged with the diagnosis of right knee pain.

OWCP also received a series of diagnostic reports dated June 4, 2020. A right lower extremity computerized tomography scan revealed tricompartment osteoarthritis with osteophytic formation and small joint effusion. A lumbar spine and right hip x-ray scan demonstrated no compression fracture. A right knee x-ray scan revealed possible acute fracture noted posterior distal femur at base of femoral condyle on lateral view.

Appellant submitted an unsigned authorization for examination and/or treatment (Form CA-16), which noted a date of injury of June 4, 2020 and diagnosis of knee sprain.

OWCP received a witness statement dated June 4, 2020 from J.O., an employing establishment custodian, who indicated that he performed a general cleaning of the restrooms at approximately 11:30 p.m.

In reports dated June 11 through September 17, 2020, Dr. Graham Whitfield, a Board-certified orthopedic surgeon, described the June 4, 2020 employment incident and noted appellant's complaints of bilateral knee pain, lower back pain with muscle spasm, left ankle pain, and left shoulder pain. He reviewed her history and provided examination findings. Dr. Whitfield diagnosed right knee arthralgia with chondromalacia patella, left knee arthralgia with

³ OWCP assigned the present claim OWCP File No. xxxxxx275. Appellant has a previously-accepted traumatic injury claim under OWCP File No. xxxxxx451, for left knee internal derangement, bilateral knee contusion, left leg sprain, open wound of the hip and thigh without complications, and left ankle contusion causally related to a March 15, 2012 employment incident. She also previously filed an occupational disease claim (Form CA-2) under OWCP File No. xxxxxx443 on November 29, 2017 alleging that she sustained bilateral knee conditions due to factors of her federal employment. OWCP has administratively combined OWCP File Nos. xxxxxx275, xxxxxx451, and xxxxxx443, with OWCP File No. xxxxxx451 serving as the master file.

chondromalacia patella, lumbosacral sprain, and left ankle arthralgia. He completed duty status reports (Form CA-17) and work restriction notes dated June 11 and August 13, 2020, which indicated that appellant was unable to work.

In a letter dated September 29, 2020, appellant's representative contended that on June 4, 2020 appellant sustained a traumatic injury when she slipped and fell in the bathroom. She noted that appellant was evaluated in the emergency room and had follow-up appointments with Dr. Whitfield. Appellant's representative indicated that appellant had been unable to perform her duties since her date of injury.

In an April 2, 2021 letter, appellant's representative indicated that appellant had not received a response from her September 29, 2020 letter. She requested that OWCP review appellant's medical documentation.

In an April 23, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a May 11, 2021, response to OWCP's development letter, appellant indicated that she went to the restroom after lunch when she slipped and fell down on her right knee. She noted that she immediately experienced bruising and swelling in her right knee and reported it to her supervisor.

By decision dated June 8, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the June 4, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On June 30, 2021 appellant, through her representative, requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received additional evidence. In a May 20, 2021 report, Dr. Whitfield related appellant's complaints of lower back pain with muscle spasm and lower extremity symptoms, and right knee pain. He reported that she was not working. Dr. Whitfield noted examination findings of tenderness to palpation in the lumbar spine and decreased sensation in the left lower extremity. Examination of the right knee revealed tenderness to palpation in the anterolateral and anteromedial joint lines. Dr. Whitfield diagnosed right knee arthralgia with chondromalacia patella, pes anserinus bursitis, patellar tendonitis, hamstring tendonitis, and lumbosacral sprain.

In a report dated May 31, 2021, Dr. Whitfield indicated that he was responding to OWCP's development letter. He provided his dates of examination and modalities of treatment, and referred to his June 11, 2020 report for examination findings and diagnosis. Dr. Whitfield opined that it was "clear that within reasonable medical probability [appellant] sustained injuries to her right knee at work [June 4, 2020.]"

By decision dated August 24, 2021, OWCP's hearing representative modified the June 8, 2021 decision to find that appellant has established medical diagnoses in connection with the accepted June 4, 2020 employment incident. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted June 4, 2020 employment incident.

On August 29, 2022 appellant, through her representative, requested reconsideration. The representative indicated that appellant immediately reported her injury to her supervisor and was provided with a Form CA-16 to take to the emergency room for treatment. Appellant alleged that Dr. Whitfield, her treating physician, had responded to OWCP's request for additional information and his response clearly met the criteria of causal relationship.

Appellant submitted additional evidence, including an August 15, 2022 report of Dr. Whitfield. She also resubmitted reports of him that were previously of record.

By decision dated March 3, 2023, OWCP summarily denied appellant's reconsideration request, 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.⁴ To be entitled to a merit review of an OWCP decision, a request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ Timeliness is determined by the document receipt date of the request for reconsideration as is indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS).⁶ The Board has found that the imposition of this one-year filing limitation does not constitute an abuse of discretion.⁷

OWCP may not deny a request for reconsideration solely because it was untimely filed. When a request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether the request demonstrates clear evidence that OWCP's most recent merit decision was in error.⁸ 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

⁴ 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).

⁵ 20 C.F.R. § 10.607(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (September 2020).

⁷ *G.G.*, Docket No. 18-1074 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁸ *See* 20 C.F.R. § 10.607(b); *R.S.*, Docket No. 19-0180 (issued December 5, 2019); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

claimant's request demonstrates clear evidence of error on the part of OWCP.⁹ In this regard, OWCP will limit its focus to a review of how the newly-submitted evidence bears on the prior evidence of record.¹⁰

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue decided by OWCP. The evidence must be positive, precise, and explicit, and it must manifest on its face that OWCP committed an error.¹¹ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹² 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 evidence of error on the part of OWCP.¹³ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP such that it abused its discretion in denying merit review in the face of such evidence.¹⁴

ANALYSIS

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

OWCP's regulations¹⁵ and procedures¹⁶ establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case. OWCP's most recent merit decision was issued on August 24, 2021. As appellant's request for reconsideration was not received by OWCP until August 29, 2022, more than one year after the August 24, 2021 decision, pursuant to 20 C.F.R. § 10.607(a), the Board finds that the request for reconsideration was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in denying the claim.¹⁷

⁹ *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; *supra* note 6 at Chapter 2.1602.5(a) (September 2020).

¹⁰ *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

¹¹ 20 C.F.R. § 10.607(b); *B.W.*, Docket No. 19-0626 (issued March 4, 2020); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

¹² *See G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

¹³ *B.W.*, *supra* note 11.

¹⁴ *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

¹⁵ 20 C.F.R. § 10.607(a); *see L.T.*, Docket No. 21-0844 (issued April 21, 2023); *J.W.*, Docket No. 18-0703 (issued November 14, 2018).

¹⁶ *Supra* note 6 at Chapter 2.1602.4.

¹⁷ 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 21-1152 (issued July 13, 2023); *S.C.*, Docket No. 20-1537 (issued April 14, 2021); *see Debra McDavid*, 57 ECAB 149 (2005).

The Board further finds that the case is not in posture for decision with regard to clear evidence of error. In its March 3, 2023 decision, OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.¹⁸ Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹⁹ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the director of OWCP shall contain findings and facts and a statement of reasons.²⁰ As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.²¹ In the March 3, 2023 decision, OWCP failed to explain why appellant's request for reconsideration was insufficient to demonstrate clear evidence of error.

The Board will therefore set aside OWCP's March 3, 2023 decision and remand the case for findings of fact and a statement of reasons, to be followed by an appropriate decision on appellant's reconsideration request, which describes the evidence submitted on reconsideration and provides detailed reasons for accepting or rejecting the reconsideration request.²²

CONCLUSION

The Board finds that OWCP properly determined that appellant's request for reconsideration was untimely filed. The Board further finds, however, that the case is not in posture for decision with regard to whether her request for reconsideration demonstrated clear evidence of error.

¹⁸ See *T.J.*, Docket No. 21-0586 (issued September 30, 2021); *Order Remanding Case, W.D.*, Docket No. 20-0859 (issued November 20, 2020); *Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *Order Remanding Case, T.P.*, Docket No. 19-1533 (issued April 30, 2020); see also *id.* at § 10.607(b).

¹⁹ 5 U.S.C. § 8124(a).

²⁰ 20 C.F.R. § 10.126.

²¹ *Supra* note 6 at Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

²² 5 U.S.C. § 8124(a). All evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, the evidence should be referenced by author and date. *Id.* at Chapter 2.1401.5b(2) (November 2012).

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2023 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 15, 2024
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