

<sup>2</sup> The Board notes that following the December 12, 2024 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.*

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On April 29, 2021, appellant, then a 60-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 1, 2021 she injured her right knee when she fell on a concrete porch while in the performance of duty. She stopped work on April 2, 2021. OWCP accepted the claim for right knee contusion and right knee abrasion.

On May 19, 2021, appellant was seen by Dr. Ryon M. Hennessy, a Board-certified orthopedic surgeon, who recounted appellant's history of injury, and provided physical findings. Dr. Hennessy related that appellant had improved range of motion (ROM) of the knee, but that she still had pain to the medial lateral joint, as well as posterior knee pain. He diagnosed right knee internal derangement and right knee contusion. Dr. Hennessy recommended that appellant remain off work.

On June 16, 2021, a certified physician assistant completed a duty status report (Form CA-17) indicating that appellant remained totally disabled from work due to contusion and internal derangement of the right knee.

Appellant filed claims for compensation (Form CA-7) for disability from work during the period May 17 through July 16, 2021.

By decision dated July 29, 2021, OWCP denied appellant's claim for wage-loss compensation for disability from work commencing May 17, 2021.

OWCP subsequently received reports dated July 26, August 23, September 27, and November 4, 2021, wherein Dr. Hennessy diagnosed internal derangement of the right knee stemming from a work-related injury. Dr. Hennessy also opined that appellant was to remain off work. He related that she had right knee pain beyond that of a contusion, which by definition was caused by internal derangement of the knee. In a November 3, 2021 report, Dr. Hennessy added a diagnosis of lumbar radiculopathy and noted that appellant also had likely right knee meniscal tears.

OWCP also received a Form CA-17, dated July 26, 2021, wherein a certified physician assistant again noted diagnoses of right knee internal derangement and contusion, and indicated that appellant was disabled from work.

Appellant filed additional CA-7 forms claiming wage-loss compensation for disability from work during the period July 17 through September 24, 2021.

In a December 29, 2021 report, Dr. Hennessey opined that appellant was limited to light-duty work.

On February 22, 2022, appellant requested reconsideration. In an attached statement, she explained that she had been held off work from April 1 through October 2021 due to her knee pain,

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<sup>3</sup> *Order Remanding Case*, Docket No. 25-0003 (issued November 6, 2024).

and that she returned to work with restrictions in October 2021. On February 17, 2022, appellant was informed by the postmaster that light-duty work was no longer available.

OWCP continued to receive CA-17 forms dated August 23, September 27, and December 29, 2021 wherein Dr. Hennessey provided work restrictions and a diagnosis of right knee internal derangement. It also received similar CA-17 forms dated December 1, 2021 and February 16, 2022 from a physician assistant.

In reports dated December 1, 2021, February 16 and 23, and March 14, 2022, Dr. Hennessey advised that appellant was limited to light-duty work.

By decision dated April 18, 2022, OWCP denied modification of the July 29, 2021 decision.

On November 4, 2022, appellant requested reconsideration and submitted additional evidence.

In reports dated April 20, March 23, June 27, August 3, September 21, and October 19, 2022, Dr. Hennessey noted appellant's physical examination findings, including decreased ROM of the right knee and medial joint line tenderness. In reports dated March 23 and June 17, 2022, Dr. Hennessey continued to relate appellant's diagnosis as derangement of the right knee, and reported that she was limited to light-duty work. In his reports dated August 2, September 21, and October 19, 2022, he related that her magnetic resonance imaging (MRI) scan of the right knee demonstrated right knee patellofemoral osteoarthritis aggravated by the work injury. Dr. Hennessey also noted that appellant had no right knee symptoms prior to her employment injury. OWCP also continued to receive CA-17 forms signed by a physician assistant.

By decision dated November 9, 2022, OWCP denied modification of the July 29, 2021 decision.

Thereafter, OWCP continued to receive additional medical evidence.

In a report dated October 27, 2022, Dr. Moni Abraham, an internist, noted appellant's history of injury and diagnosed post-traumatic osteoarthritis of the right knee.

OWCP also received additional reports dated November 30, 2022, January 11, and April 26, 2023, and CA-17 forms dated November 30, 2022, wherein Dr. Hennessey diagnosed right knee internal derangement with patellofemoral arthritis related to appellant's employment injury. Dr. Hennessey, in reports dated January 11 and April 26, 2023, noted that appellant was working in a light-duty sedentary position. OWCP also received a Form CA-17 dated November 30, 2022 wherein Dr. Hennessey provided work restrictions and opined that appellant was able to return to work with restrictions as of October 10, 2021.<sup>4</sup>

On April 5, 2024, appellant requested reconsideration and submitted additional medical evidence. In February 28, 2023 and March 19, 2024 progress reports, Dr. J. Michael Morgenstern, who specializes in orthopedic surgery, noted appellant's history of injury, provided examination

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<sup>4</sup> The employing establishment offered appellant a limited-duty assignment, as a modified administrative assistant on January 12, 2023. Appellant accepted the position on that date.

findings, and diagnosed right knee tricompartmental arthritis with torn meniscus, which he attributed to her April 1, 2021 employment injury. In his March 19, 2024 report, he noted that appellant was working in a sedentary position, and opined that appellant was totally disabled from her date-of-injury position. OWCP also received CA-17 forms dated February 28, 2023, and February 27 and March 19, 2024, wherein Dr. Morgenstern noted appellant's diagnosis of right knee internal derangement and appellant's work restrictions.

A March 9, 2024 MRI scan of appellant's right knee demonstrated findings of tricompartmental osteoarthritic changes, most prominent and severe in the patellofemoral compartment; small radial tear suspected in the posterior horn of the lateral meniscus; and small Baker's cyst.

OWCP also received a March 27, 2024 report from Dr. Chandrasekhar Sompalli, an orthopedic surgeon. Dr. Sompalli noted appellant's physical examination findings and diagnoses of right knee unilateral primary osteoarthritis and probable tear of the right knee lateral meniscus. She recommended that appellant undergo right knee surgery.

By decision dated April 11, 2024, OWCP denied appellant's reconsideration request, finding that it was untimely filed, and failed to demonstrate clear evidence of error.

On October 1, 2024, appellant filed an appeal with the Board. By order dated November 6, 2024,<sup>5</sup> the Board found that OWCP failed to consider and address all the evidence submitted by appellant. The Board set aside the April 11, 2024 decision and remanded the case for a review of all the evidence of record, to be followed by an appropriate decision.

While the appeal was pending with the Board, OWCP received a May 14, 2024 report, wherein Dr. Sompalli diagnosed right knee unilateral primary osteoarthritis, as well as right knee abrasion and contusion, and probable right knee lateral meniscus tear. Dr. Sompalli recommended that appellant continue with sedentary work and undergo total knee replacement.

By decision dated December 12, 2024, OWCP again 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.<sup>6</sup> This discretionary authority, however, is subject to certain restrictions. A request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.<sup>7</sup> Timeliness is determined by the document receipt date (*i.e.*, the "received date"

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<sup>5</sup> *Supra* note 3.

<sup>6</sup> 5 U.S.C. § 8128(a); *D.P.*, Docket No. 24-0848 (issued September 23, 2024); *J.B.*, Docket No. 24-0011 (issued March 19, 2024); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

<sup>7</sup> 20 C.F.R. § 10.607(a).

in OWCP's Integrated Federal Employees' Compensation System (iFECS)).<sup>8</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>9</sup>

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.<sup>10</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 demonstrates clear evidence of error on the part of OWCP.<sup>11</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>12</sup>

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.<sup>13</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

### ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of the claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

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<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

<sup>9</sup> *D.P.*, *supra* note 6; *J.B.*, *supra* note 6; *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).

<sup>10</sup> *See* 20 C.F.R. § 10.607(b); *A.L.*, Docket 24-0364 (issued July 30, 2024); *J.B.*, *id.*; *R.S.*, Docket No. 19-0180 (issued December 5, 2019); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

<sup>11</sup> *A.L.*, *id.*; *J.B.*, *id.*; *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 8 at Chapter 2.1602.5(a) (September 2020).

<sup>12</sup> *A.L.*, *id.*; *J.B.*, *id.*; *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).

<sup>13</sup> 20 C.F.R. § 10.607(b); *A.L.*, *id.*; *J.B.*, *id.*; *B.W.*, Docket No. 19-0626 (issued March 4, 2020); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

<sup>14</sup> *See A.L.*, *id.*; *J.B.*, *id.*; *G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

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

<sup>16</sup> *A.L.*, *id.*; *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

The last merit decision was issued in this case on November 9, 2022. As the most recent request for reconsideration was not received by OWCP until April 5, 2024, more than one year after the November 9, 2022 merit 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.<sup>17</sup>

Following the November 9, 2022 merit decision, OWCP received an October 27, 2022 report from Dr. Abraham diagnosing post-traumatic osteoarthritis of the right knee. It also received March 17 and May 14, 2024 reports from Dr. Sompalli, diagnosing right knee unilateral primary osteoarthritis and probable tear of the right knee lateral meniscus. However, these reports from Drs. Abraham and Sompalli did not address the underlying issue of disability from work commencing May 17, 2021, causally related to the accepted April 1, 2021 employment injury. Appellant also submitted a March 9, 2024 MRI scan, which did not address the issue of disability.<sup>18</sup> As such, this evidence does not establish that OWCP committed clear error in the November 9, 2022 decision.<sup>19</sup>

OWCP also received medical reports dated November 30, 2022, January 11 and April 26, 2023 from Dr. Hennessy diagnosing right knee internal derangement, aggravated by her work injury. In these reports Dr. Hennessy also related that appellant was limited to sedentary work. Similarly, in reports dated from February 28, 2023 to March 19, 2024, Dr. Morgenstern diagnosed right knee tricompartmental arthritis with torn meniscus, which he attributed to her April 1, 2021 employment injury. He also noted that appellant was limited to sedentary work. These reports are insufficient to raise a substantial question as to the correctness of the November 9, 2022 decision. The Board finds that these reports did not establish that the medical evidence of record prior to the November 9, 2022 decision clearly established appellant's claim for disability benefits.

The term clear evidence of error is intended to represent a difficult standard.<sup>20</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>21</sup> Even 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>22</sup> The Board finds that the evidence submitted after November 9, 2022 did not establish clear evidence of error in the denial of appellant's

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<sup>17</sup> 20 C.F.R. § 10.607(b); *L.S.*, Docket No. 22-1327 (issued August 19, 2024); *J.N.*, Docket No. 23-0974 (issued May 14, 2024); *A.S.*, Docket No. 24-0104 (issued March 25, 2024); see *Debra McDavid*, 57 ECAB 149 (2005).

<sup>18</sup> Diagnostic test reports standing alone, however, do not address the issue of disability. See *C.L.*, Docket No. 25-0056 (issued November 22, 2024); *G.W.*, Docket No. 20-0879 (issued July 28, 2021); *E.H.*, Docket No. 19-0365 (issued March 17, 2021); *D.G.*, Docket No. 18-1038 (issued January 23, 2019); *M.C.*, Docket No. 16-1135 (issued September 11, 2017); *G.B.*, Docket No. 13-1260 (issued December 2, 2013).

<sup>19</sup> *C.L.*, *supra* note 18; *L.S.*, *supra* note 17; *J.N.*, *supra* note 17; *A.S.*, *supra* note 17; see *Debra McDavid*, *supra* note 17.

<sup>20</sup> See *supra* note 9 at Chapter 2.1602.5a (September 2020); see also *E.R.*, Docket No. 24-0681 (issued July 29, 2024); see also *K.W.*, Docket No. 19-1808 (issued April 2, 2020).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

disability claim in the November 9, 2022 decision. This evidence is therefore insufficient to demonstrate clear evidence of error.

As the evidence submitted on reconsideration is insufficient to raise a substantial question concerning the correctness of OWCP's November 9, 2022 merit decision, the Board finds that appellant's request for reconsideration fails to demonstrate clear evidence of error.

Accordingly, the Board finds that OWCP properly denied appellant's April 5, 2024 request for reconsideration of the merits of the claim, 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 of the merits of the claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 12, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 22, 2025  
Washington, DC

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

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

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