

FACTUAL HISTORY

On January 8, 2019 appellant, then a 58-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 3, 2019 he injured his right leg and knee when he misjudged a curb as he dismounted his postal vehicle while in the performance of duty. He stopped work on January 5, 2019 and returned to full-time light-duty work on August 4, 2019. OWCP accepted the claim for right lower leg strain and right medial meniscus tear. It paid appellant wage-loss compensation for total disability on the supplemental rolls effective February 20, 2019 and for partial disability on the supplemental rolls from August 19, 2019 through October 21, 2020.³

Appellant underwent OWCP-authorized arthroscopic surgery on May 22, 2019 by Dr. Arash A. Dini, a Board-certified orthopedic surgeon, including partial medial meniscectomy, chondroplasty, and synovectomy.

On December 8, 2021 appellant underwent a magnetic resonance (MR) arthrogram of the right knee, which demonstrated mucinous degeneration with mild-to-moderate chronic partial anterior collateral ligament tearing, a markedly diminutive medial meniscus consistent with resection, possible posterior root tear, high grade chondral loss of the medial tibial plateau with mild subchondral bone marrow edema, and mild chondral loss in the lateral and patellofemoral compartments.

In a medical report dated December 20, 2021, Dr. Eric Ferkel, a Board-certified orthopedic surgeon, reviewed the MR arthrogram and documented his physical examination findings. He diagnosed right knee medial meniscus root tear and recommended right knee arthroscopy with medial and lateral meniscal repair. Dr. Ferkel estimated that appellant would require crutches for four to six weeks after surgery. In a work status note of even date, he indicated that he was temporarily totally disabled and checked a box marked “cannot work.”

On March 16, 2022 appellant underwent OWCP-authorized arthroscopic surgery by Dr. Ferkel, including repair of the posterior horn of the medial meniscus, chondroplasty, partial meniscectomy of the inner rim of the lateral meniscus, and microfracture of the lateral intercondylar notch with application of platelet rich plasma.

In follow-up medical and work status reports dated July 19, 2022 through March 14, 2023, Dr. Ferkel indicated that appellant remained temporarily totally disabled and checked a box marked “do not return to work.” In medical reports dated April 26 through December 4, 2023, he noted his work status as “retired.”

On December 27, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work for the period December 1, 2021 through December 1, 2023.

On February 5, 2024 OWCP referred appellant, together with the case record and a statement of accepted facts (SOAF), to Dr. Hrair E. Darakjian, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether appellant’s accepted conditions continued to prevent him from working.

³ Appellant retired from federal service effective November 30, 2021.

In a February 23, 2024 report, Dr. Darakjian reviewed the history of the January 3, 2019 employment injury and appellant's subjective complaints. He documented physical examination findings and diagnosed right knee internal derangement and moderate osteoarthritis of the right knee. Dr. Darakjian opined that appellant had reached maximum medical improvement and that no further treatment is anticipated at this time. He indicated that he anticipated that appellant would at some point require a total knee replacement in the future. Dr. Darakjian found that appellant could not return to his position as a letter carrier, but could perform modified work with restrictions of no lifting greater than 20 pounds and no repetitive squatting or kneeling.

OWCP also received follow-up medical reports from Dr. Ferkel dated April 9 through September 5, 2024, and physical therapy reports.

By decision dated September 10, 2024, OWCP denied appellant's claim for wage-loss compensation, finding that he was not in a work status during the period claimed. Appellant had voluntarily retired and was receiving retirement benefits, effective November 1, 2021, during the period for which he also claimed OWCP wage-loss compensation benefits.

OWCP continued to receive evidence, including physical therapy reports and follow-up reports by Dr. Ferkel dated November 14 and December 31, 2024.

In a medical report dated January 27, 2025, Dr. Steve K. Kwak, a Board-certified orthopedic surgeon, recommended a total knee replacement.

On April 8, 2025, Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser, reviewed the medical record and indicated that total knee replacement was not medically necessary for appellant.

OWCP also received follow-up medical reports from Dr. Kwak dated June 2, 2025.

On November 3, 2025 appellant requested reconsideration of OWCP's September 10, 2024 decision. He contended that OWCP improperly denied his claim for disability from work during the period December 1, 2021 through December 1, 2023 based on his retirement. Appellant asserted that the medical evidence of record established that he was disabled from work due to the accepted January 3, 2019 employment injury during the claimed period. He also submitted an August 27, 2025 follow-up medical report by Dr. Kwak and a letter of medical necessity for total knee replacement dated November 21, 2025 by Kara Zurawski, a physician assistant.

By decision dated November 25, 2025, OWCP summarily denied appellant's request for reconsideration of the merits of his claim, 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 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

⁴ *Supra* note 1 at § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

decision for which review is sought.⁵ Timeliness is determined by the document receipt date, *i.e.*, the “received date” in OWCP’s Integrated Federal Employees’ Compensation System (iFECS).⁶ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁷

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.⁸ Its 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 OWCP.⁹

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹⁰ 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.¹¹

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

⁵ 20 C.F.R. § 10.607(a).

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

⁷ *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).

⁸ *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).

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

¹⁰ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 6 at Chapter 2.1602.5 (September 2020).

¹¹ *Id.*

¹² *G.G.*, *supra* note 7; *see also* 20 C.F.R. § 10.607(b); *id.* at Chapter 2.1602.5a (September 2020).

¹³ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *id.* at Chapter 2.1602.5a (September 2020).

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

ANALYSIS

The Board finds that this case is not in posture for decision.

In its November 25, 2025 decision, OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.¹⁵ 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.¹⁶ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.¹⁷ 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 type of evidence which would overcome it.¹⁸

In its November 25, 2025 decision, OWCP did not discharge its responsibility to set forth findings of fact and a clear statement of reasons, explaining the disposition, so that appellant could understand the basis for its decision regarding clear evidence of error.

The Board shall therefore set aside OWCP's November 25, 2025 decision and remand the case for an appropriate decision, which describes the evidence submitted and provides detailed reasons for accepting or rejecting the reconsideration request.¹⁹

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁵ See *Order Remanding Case, J.B.*, Docket No. 24-0760 (issued August 28, 2024); *Order Remanding Case, J.D.*, Docket No. 24-0044 (issued April 22, 2024); *Order Remanding Case, R.G.*, Docket No. 23-0011 (issued June 14, 2023); *Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); see also 20 C.F.R. § 10.607(b).

¹⁶ 5 U.S.C. § 8124(a).

¹⁷ 20 C.F.R. § 10.126.

¹⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, Disallowances, 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).

¹⁹ See *Order Remanding Case, M.B.*, Docket No. 22-1026 (issued January 25, 2023); *Order Remanding Case, P.G.*, Docket No. 17-1461 (issued February 7, 2019); *R.T.*, Docket No. 19-0604 (issued September 13, 2019).

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2025 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 15, 2026
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