

FACTUAL HISTORY

On June 26, 2004 appellant, then a 50-year-old general clerk, filed a traumatic injury claim alleging that on May 27, 1995 she injured her neck while performing her clerk duties and also experienced job stress. She was granted disability retirement on August 17, 2000. The employing establishment controverted appellant's claim noting that it was untimely filed and duplicative of other claims filed by appellant.²

On October 20, 2004 the Office advised appellant of the factual and medical evidence needed to establish her claim. It requested that she submit additional evidence, including a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

On November 5, 2004 appellant's attorney provided a summary of her compensation claims and requested a status of the current claim, file number xxxxxx928.

By decision dated November 24, 2004, the Office denied the claim on the grounds that it was not timely filed in accordance with 5 U.S.C. § 8122. It noted that the date of injury was May 27, 1995 and the claim for compensation was filed on June 26, 2004.

In an appeal form dated and postmarked November 9, 2009, appellant requested a review of the written record. She submitted various medical records from Dr. Jeffrey C. Margetts, a neurologist, dated June 21, 1990 to July 31, 1998, who treated her for a cervical strain and C5-6 herniated disc. Appellant also submitted records from Dr. Steven J. Beer, a Board-certified orthopedist, who treated her from January 9 and February 25, 2008, for spondylitis disease and cervicalgia. She was treated by Dr. John H. Babson, a Board-certified internist, from February 25, 2008 to May 7, 2009, for a left knee injury and degenerative disc disease of the cervical spine. Appellant submitted documents from her other compensation claims. In an October 22, 2009 statement, she disagreed with the Office decision denying her claim as untimely and asserted that she promptly reported her injury to her supervisor.

In a decision dated January 13, 2010, the Office denied appellant's request for a review of the written record. It found that the request was not timely filed as it was not made within 30 days from issuance of its November 24, 2004 decision. Appellant was informed that her case had been considered in relation to the issues involved and that the request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration from the Office and submitting evidence not previously considered.

² Appellant filed the following claims for compensation: a May 11, 1990 injury that was accepted for degenerative disc disease and closed on November 19, 1998, claim number xxxxxx378; a May 11, 1990 injury that was accepted for neck sprain and displacement of cervical intervertebral disc with myelopathy and closed on August 27, 2001, claim number xxxxxx632; and an October 26, 1998 injury that was accepted for a back condition and closed on July 7, 2000, claim number xxxxxx860. These claims contain no decisions over which the Board has jurisdiction; *see id.*

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on [her] claim before a representative of the Secretary."³ Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁴ Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, the Office may within its discretionary powers grant or deny appellant's request and must exercise its discretion.⁵ The Office's procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).⁶

ANALYSIS

Appellant requested a review of the written record in an appeal request form dated November 9, 2009. As the request was more than 30 days after issuance of the November 24, 2004 Office decision, her request for a review of the written record was untimely filed.

The Office considered the matter in relation to the issue involved and found that additional argument and evidence could be submitted with a request for reconsideration. It has broad administrative discretion in choosing means to achieve its general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.⁷ There is no indication that the Office abused its discretion in this case in finding that appellant could further pursue the matter through the reconsideration process.

On appeal appellant references file numbers xxxxxx928, xxxxxx378 and xxxxxx632 and asserts that she has submitted evidence of timely filed claims, physician reports, diagnostic reports and witness statements in support of her work injury on May 27, 1995. However, the Board notes that in this appeal it only has jurisdiction over whether appellant filed a timely request for a review of the written record and cannot consider the merits of her claim.⁸ Appellant also requested her claim for a recurrence be opened and that her medical expenses be paid. The

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. §§ 10.616, 10.617.

⁵ *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁶ *See R.T.*, 60 ECAB ___ (Docket No. 08-408, issued December 16, 2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

⁷ *Samuel R. Johnson*, 51 ECAB 612 (2000).

⁸ *See supra* notes 1, 2.

Board notes that there is no matter involving a recurrence of disability over which the Board has jurisdiction on this appeal.

CONCLUSION

The Board finds that the Office properly denied appellant's request for a hearing as untimely.

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2010
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board