



## **ISSUE**

The issue is whether OWCP properly denied appellant's request for a review of the written record as untimely.

On appeal, appellant argued the merits of her case.

## **FACTUAL HISTORY**

On May 16, 2012 appellant, then a 50-year-old supervisory production controller (aircraft), filed a traumatic injury claim (Form CA-1) alleging injuries to her shoulders, neck, back, and arms on May 3, 2012 as a result of being assaulted by an employee.

By decision dated July 2, 2012, OWCP denied the claim finding that the medical evidence submitted was not sufficient to establish a causal relationship between appellant's conditions and the May 3, 2012 employment incident.

In an appeal request form dated September 23, 2012, appellant requested a review of the written record by an OWCP hearing representative. She simultaneously filed a request for reconsideration and submitted additional medical evidence in support of her claim.

By decision dated May 22, 2014, OWCP denied appellant's request for a review of the written record finding that her request was untimely because it was not filed within 30 days of its July 2, 2012 decision. It further indicated that it had exercised its discretion but denied the request as the issues could be addressed by requesting reconsideration and submitting evidence not previously considered by OWCP.

## **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides: "Before review under section 8128(a) of this title [relating to reconsideration], a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on [his or her] claim before a representative of the Secretary."<sup>4</sup>

Section 10.615 of Title 20 of the Code of Federal Regulations provide, "A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record."<sup>5</sup> The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.<sup>6</sup> OWCP has discretion, however, to grant or

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<sup>4</sup> 5 U.S.C. § 8124(b)(1).

<sup>5</sup> 20 C.F.R. § 10.615.

<sup>6</sup> *Id.* at § 10.616.

deny a request that is made after this 30-day period.<sup>7</sup> In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.<sup>8</sup>

### ANALYSIS

Appellant had 30-calendar days from OWCP's July 2, 2012 decision, or until August 1, 2012, to request a review of the written record. She filed a request for a review of the written record by an OWCP hearing representative dated September 23, 2012, which was more than 30 days after OWCP issued its July 2, 2012 decision.<sup>9</sup> Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.<sup>10</sup> Because the application was not timely filed, appellant was not entitled to a review of the written record.

The Board notes that appellant also filed a request for reconsideration on September 23, 2012. The Board has found that when a request for a hearing under section 8124(b)(1) and a request for reconsideration under section 8128 of FECA are simultaneously filed, OWCP must properly consider a claimant's request for a hearing first to avoid creating a conflict with the requirements of section 8124(b)(1) that a hearing may be granted only before review under 5 U.S.C. § 8128(a).<sup>11</sup> Therefore, the Board finds that the hearing request took precedence over the reconsideration request.

Appellant was not entitled to a review of the written record as a matter of right under section 8124(b)(1) of FECA. Exercising its discretion to grant a review of the written record, OWCP denied appellant's request as she could equally well address any issues in her case by requesting reconsideration. Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP's July 2, 2012 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for a review of the written record.

On appeal, appellant argues the merits of her case. The Board noted above that it only has jurisdiction over OWCP's May 22, 2014 nonmerit decision which denied her request for a review of the written record and therefore is precluded from conducting a merit review.

### CONCLUSION

The Board finds that OWCP properly denied appellant's request for a review of the written record as untimely.

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<sup>7</sup> See *G.W.*, Docket No. 10-782 (issued April 23, 2010). See also *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>8</sup> *Id.* See also *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>9</sup> Under OWCP regulations and procedures, the timeliness of a request for a hearing is determined on the basis of the postmark of the envelope containing the request. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011). If the postmark is not legible, the request will be deemed timely unless OWCP has kept evidence of date of delivery on the record reflecting that the request is untimely. *Id.*

<sup>10</sup> See *William F. Osborne*, 46 ECAB 198 (1994).

<sup>11</sup> See *Mary G. Allen*, 40 ECAB 190 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 22, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 27, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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