

**United States Department of Labor
Employees' Compensation Appeals Board**

E.M., Appellant

and

**DEPARTMENT OF COMMERCE, CENSUS
BUREAU, Jackson, TN, Employer**

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**Docket No. 11-1209
Issued: November 23, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 21, 2011 appellant filed a timely appeal from a March 22, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for review of the written record. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the nonmerit issue in this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal, appellant argued the merits of the case. However, under 20 C.F.R. § 501.3(e), for decisions of OWCP issued on or after November 19, 2008, the Board's review authority is limited to appeals which are filed within 180 days from the date of issuance of OWCP's decision. The last decision issued by OWCP addressing the merits of appellant's case was dated October 14, 2010, more than 180 days before appellant's appeal date. Appellant's appeal letter was postmarked April 13, 2011. The 180 day period expired as of April 12, 2011. The Board is without jurisdiction to review the October 14, 2010 OWCP decision.

ISSUE

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

FACTUAL HISTORY

On September 1, 2010 appellant, then a 60-year-old enumerator, filed a traumatic injury claim alleging an injury when she was bitten on her legs by a dog while performing enumerator duties on May 6, 2010.

By letter dated September 10, 2010, OWCP requested additional medical evidence. Appellant was afforded 30 days to submit the documents. No further evidence was received by OWCP.

On October 14, 2010 OWCP denied appellant's claim on the grounds that she had not established that she sustained an injury caused by the alleged incident.

Appellant requested a review of the written record on November 16, 2010. She submitted treatment notes and hospital records.

In a decision dated March 22, 2011, OWCP denied appellant's request for review of the written record. It found that the request was not timely filed. Appellant was informed that her case had been considered in relation to the issues involved and that the request was further denied as the issues could be addressed by requesting reconsideration before and submitting evidence not previously considered.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that, before review under section 8128(a) of this title, 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 his claim before a representative of the Secretary.³ Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or review of the written record. The regulations provide that a request for a hearing or review of the written record must be made within 30 days, as determined by the postmark or other carrier's date marking, of the date of the decision for which a hearing is sought.⁴

OWCP, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and OWCP must exercise this discretionary authority in deciding whether to grant a hearing. Its procedures require it to exercise discretion to grant or deny a hearing when a hearing request is

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.616 (a); *N.M.*, 59 ECAB 511(2008).

untimely or made after reconsideration under section 8128(a), are a proper interpretation of FECA and Board precedent.⁵

ANALYSIS

Appellant requested a review of the written record before OWCP's Branch of Hearings and Review in a letter postmarked November 16, 2010. As the request was submitted more than 30 days following issuance of the October 14, 2010 decision, it was untimely filed. The Board notes that the 30th day was Monday, November 15, 2010; however, the request for review of the written record was postmarked on November 16, 2010.

OWCP considered the matter in relation to the issue involved and found that additional evidence could be submitted with a request for reconsideration. It has administrative discretion to determine whether a request for review of the written record should be granted even though the request is untimely. 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.⁶ Because reconsideration existed as an alternative appeal right to address the issues raised by OWCP's October 14, 2010 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for review of the written record.

CONCLUSION

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

⁵ *Sandra F. Powell*, 45 ECAB 877 (1994).

⁶ *Samuel R. Johnson*, 51 ECAB 612 (2000).

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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