

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

M.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New York, NY, Employer**

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**Docket No. 12-651
Issued: August 8, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 23, 2012 appellant filed a timely appeal from November 28, 2011 and January 4, 2012 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP) denying his requests for a hearing and reconsideration.¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly denied appellant's request for a review of the written record; and (2) whether OWCP properly denied appellant's January 3, 2012 request for reconsideration under 5 U.S.C. § 8128(a) as untimely.

¹ The last merit decision in this case was a decision of the Board dated September 30, 2011.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case was previously before the Board.³ In a September 30, 2011 decision, the Board affirmed a November 19, 2010 decision of OWCP, finding that appellant failed to establish that he sustained an injury on October 1, 2010 in the performance of duty. The facts and history of the case as set forth in the prior decision are incorporated by reference.

On October 30, 2011 appellant submitted a request for a review of the written record.

In a decision dated November 28, 2011, an OWCP hearing representative denied appellant's request for a review of the written record. It found that the Board's decision of September 30, 2011 addressed appellant's traumatic injury claim. Because decisions of the Board were final, the hearing representative determined that the Branch of Hearings and Review did not have jurisdiction to review decisions of the Board. It also exercised its discretion and determined that the issue in this case could equally well be addressed by requesting reconsideration from OWCP.

On December 19, 2011 OWCP received a request for reconsideration of the November 19, 2010 OWCP merit decision together with additional medical evidence. Appellant included a magnetic resonance imaging (MRI) scan and ambulance report to support that he sustained an injury on October 1, 2010 when he was involved in a motor vehicle accident at work.

By decision dated January 4, 2012, OWCP denied appellant's request for reconsideration finding that it was untimely filed and failed to present clear evidence of error.

LEGAL PRECEDENT -- ISSUE 1

Section 8124(b)(1) of FECA 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 his or her claim before a representative of the Secretary.⁴ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide 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.⁵

FECA provides OWCP with original jurisdiction in the processing of compensation claims and section 8124(a) provides OWCP with the duty and authority to issue an initial decision on an employee's claim for compensation.⁶ Once an initial decision is made in a compensation case, the claimant's rights arise by which the claimant may seek further review of her claim: the right to a hearing before OWCP, the right to reconsideration before OWCP or an appeal to the Board. The Board has clarified that OWCP does not have discretionary authority to grant a request for hearing or review of the written record immediately following a Board

³ Docket No. 11-644 (issued September 30, 2011).

⁴ 5 U.S.C. § 8124(b) (1).

⁵ 20 C.F.R. §§ 10.616, 10.617.

⁶ *Id.* at § 8124(a).

decision. OWCP's Branch of Hearing and Review may not assume jurisdiction in the claims process absent a final adverse decision by the Director, which has not previously been reviewed.⁷

ANALYSIS -- ISSUE 1

Appellant filed a claim alleging that on October 1, 2010 he sustained a traumatic injury in the performance of duty. In a decision dated November 19, 2010, OWCP denied his claim. Following the issuance of this decision, appellant exercised filed an appeal to the Board. The Board reviewed the case and issued its final decision on this claim on September 30, 2011. On October 30, 2011 appellant requested a review of the written record. By decision dated November 28, 2011, OWCP denied his request for a review of the written record. The Board finds that OWCP properly denied appellant's request.

OWCP properly found that the Branch of Hearings and Review did not have jurisdiction to review a decision of the Board. Section 8149 of FECA and its implementing regulations provide that decisions of the Board, on appeals taken from claims of employees are final as to the subject matter appealed and such decision shall not be subject to review, except by the Board.⁸ In this case, the Board issued a final decision on appellant's traumatic injury claim on September 30, 2011. OWCP did not subsequently issue a final decision. Rather, on October 30, 2011, appellant requested a review of the written record. The Board has held that, following review of an OWCP decision, a claimant does not have the right under 5 U.S.C. § 8124(b)(1) to request an oral hearing or a review of the written record in the absence of a final OWCP decision.⁹ Appellant had no right to request an oral hearing or a review of the written record following the issuance of the Board's September 30, 2011 decision. Because the record contains no final and unreviewed OWCP decision over which OWCP's Branch of Hearings and Review could assume jurisdiction to exercise its discretionary appellate authority, the Board finds that OWCP properly denied appellant's request for a review of the written record.¹⁰

LEGAL PRECEDENT -- ISSUE 2

To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant must file his application for review within one year of the date of that decision.¹¹ The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the one-year period begins on the date of the original decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board and any merit decision following action by the Board.¹²

⁷ *Robert N. Thomas*, 51 ECAB 180 (1999); *Eileen A. Nelson*, 46 ECAB 377 (1994).

⁸ 5 U.S.C. § 8149; 20 C.F.R. § 501.6(c).

⁹ *Id.* See also *William P. Maher*, Docket No. 95-700 (issued January 23, 1996).

¹⁰ See also *J.H.*, Docket No. 09-1406 (issued January 14, 2010).

¹¹ 20 C.F.R. § 10.607(a).

¹² *D.G.*, 59 ECAB 455 (2008); *Veletta C. Coleman*, 48 ECAB 367 (1997); *Leon D. Faidley*, 41 ECAB 104, 111 (1989).

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly determined that appellant failed to file a timely request for reconsideration. The Board issued a merit decision in this case on September 30, 2011. Appellant had one year to request further review before OWCP. His request for reconsideration was received by OWCP on December 19, 2011, within one year of the Board's decision. Accordingly, appellant request for reconsideration was timely filed. On remand of this case, OWCP shall review the evidence submitted by appellant with his December 19, 2011 request for reconsideration and issue a decision under the appropriate standard of review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for a review of the written record. The Board further finds that OWCP improperly denied his request for reconsideration as untimely and failing to establish clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the November 28, 2011 decision is affirmed and the January 4, 2012 decision of the Office of Workers' Compensation Programs is set aside for further proceedings consistent with this opinion.

Issued: August 8, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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