



## **FACTUAL HISTORY**

On April 12, 2012 appellant, then a 40-year-old correctional officer, filed a traumatic injury claim alleging that on April 7, 2012 he was involved in a motor vehicle accident while in the performance of duty. He injured his left hand, thumb and experienced back pain and headaches. Appellant stopped work on April 7, 2012. The employing establishment noted that he was in the performance of duty.

From April 13 to 25, 2012 appellant was initially treated by Dr. Salvatore DeVincenzo, a Board-certified internist, who diagnosed loss of memory after a motor vehicle accident and returned appellant to work with restrictions. In an attending physician's report, Dr. DeVincenzo noted with a check mark "no" that appellant's condition was not caused by an employment activity. On April 24, 2012 he opined that appellant was undergoing diagnostic studies and was totally disabled. Appellant was treated by Dr. Kaiyu Ma, a Board-certified neurologist, on April 26, 2012, after the motor vehicle accident. Dr. Ma diagnosed syncope, questionable loss of consciousness after the motor vehicle accident, possible seizure disorder and arrhythmia.

By letter dated May 8, 2012, OWCP requested that appellant submit additional information. It noted that the record lacked a comprehensive medical report from his treating physician, which included a reasoned explanation as to how the motor vehicle accident caused or contributed to his claimed injuries.

Appellant submitted an April 7, 2012 report from Dr. Douglas Mayer, a Board-certified internist. He reported hitting his head while exiting the vehicle. On April 19, 2012 appellant was treated by Dr. Anuj Vohra, an osteopath, for a head injury. On May 4, 2012 Dr. DeVincenzo noted that appellant was disabled from April 9 to 13, 2012 and could not drive. In a May 31, 2012 report, Dr. Ma returned appellant to work on June 4, 2012 subject to restrictions.

In a June 8, 2012 decision, OWCP denied appellant's claim for compensation. It found that the medical evidence failed to establish a head injury or other condition related to the accepted motor vehicle accident.

In an undated appeal request form, received on July 16, 2012 and postmarked July 13, 2012, appellant sought a review of the written record. In an undated statement he reiterated the facts surrounding the motor vehicle accident of April 7, 2012. Appellant submitted medical evidence previously of record together with diagnostic studies and additional treatment notes.

In a decision dated August 3, 2012, OWCP denied appellant's request for a review of the written record. It found that the request was not timely filed. Appellant was informed that his case had been considered in relation to the issues involved and that the issues in this case could be addressed by requesting reconsideration by OWCP and submitting evidence not previously considered.

## LEGAL PRECEDENT

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.”<sup>2</sup> Section 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.<sup>3</sup> A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier’s date marking and before the claimant has requested reconsideration.<sup>4</sup> 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, OWCP may within its discretionary powers grant or deny appellant’s request and must exercise its discretion.<sup>5</sup>

## ANALYSIS

Appellant requested a review of the written record in an undated appeal form received by OWCP on July 16, 2012 and postmarked July 13, 2012. As the hearing request was made more than 30 days after issuance of the June 8, 2012 OWCP decision, his request for a review of the written record was untimely filed and he is not entitled to a review of the written record as a matter of right.

OWCP considered the matter in relation to the issue involved and determined 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.<sup>6</sup> The Board finds that OWCP did not abuse its discretion in finding that appellant could further pursue his claim through the reconsideration process. OWCP properly denied his request for a review of the written record.

On appeal, appellant asserted that he submitted sufficient medical evidence to support that his diagnosed condition was work related. As explained, the Board does not have jurisdiction to review the merits of the claim. The Board only has jurisdiction over whether appellant filed a timely request for a review of the written record. The hearing request was untimely as it was made more than 30 days after issuance of the June 8, 2012 decision and OWCP did not abuse its discretion by denying a discretionary hearing.

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<sup>2</sup> *Id.* at § 8124(b)(1).

<sup>3</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>4</sup> *Id.* at § 10.616(a).

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

<sup>6</sup> *Samuel R. Johnson*, 51 ECAB 612 (2000).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for a review of the written record pursuant to 5 U.S.C. § 8124(b)(1).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 3, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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