

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

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T.S., Appellant )

and )

DEPARTMENT OF THE NAVY, NAVAL SEA )  
SYSTEMS COMMAND-SHIPYARDS, )  
NORFOLK NAVAL SHIPYARD, )  
Portsmouth, VA, Employer )

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**Docket No. 13-1268  
Issued: September 5, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 29, 2013 appellant filed a timely appeal from a November 8, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for a review of the written record. The most recent merit decision was issued on July 31, 2012, more than 180 days prior to the filing of the instant appeal. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this decision. As the last merit decision was issued on July 31, 2012, the Board does not have jurisdiction over the merits of this case.

**ISSUE**

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

On appeal, appellant notes that he received six injections in his right knee from January 22 to March 7, 2013.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On August 29, 2006 appellant, then a 60-year-old marine machine mechanic, filed a traumatic injury claim alleging that on August 28, 2006, while taking out the trash from the tool trailer, he stepped down on a wooden block, slipped, twisted his knee and fell, thereby injuring his right knee. On September 18, 2006 OWCP accepted his claim for tear of the medial meniscus of the right knee.

On July 17, 2009 OWCP issued a schedule award for a five percent impairment of the right lower extremity. On December 2, 2011 appellant filed a claim for an additional schedule award. On July 31, 2012 OWCP issued a schedule award for a one percent impairment of the left lower extremity.

By letter dated September 27, 2012, appellant's congressman forwarded appellant's request for review of the written record by an OWCP hearing representative, which was dated September 25, 2012.

By decision dated November 8, 2012, OWCP denied appellant's request for review of the written record as it was not filed within the 30-day time limitation for requesting an oral hearing or review of the written record. It also reviewed his request under its discretionary authority, but denied the review of the written record as it determined that the case could be equally well addressed by requesting reconsideration and submitting evidence not previously considered which established that the percentage of permanent impairment was greater than the amount awarded.

## **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> 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.<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 carriers' 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 a hearing when the request is untimely or made after reconsideration under section 8128(a).<sup>5</sup>

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<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> 20 C.F.R. §§ 10.621, 10.617.

<sup>4</sup> *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>5</sup> See *M.W.*, Docket No. 12-1267 (issued November 2, 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.2(a) (October 2011).

### ANALYSIS

By decision dated July 31, 2012, OWCP issued a schedule award. Appellant had 30-calendar days from that decision, or until August 30, 2012, to request a review of the written record. Because his request was dated September 25, 2012, appellant did not timely request a review of the written record. Accordingly, he was not entitled to a review of the written record as a matter of right under section 8124(b)(1) of FECA. In its decision denying appellant's request, OWCP further exercised its discretion and denied his request on the grounds that he could equally well address the relevant issue in his case by requesting reconsideration. Because reconsideration exists as an alternative appeal right to address the issue raised by OWCP's July 31, 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.

### CONCLUSION

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

### ORDER

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 8, 2012 is affirmed.

Issued: September 5, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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