



## **FACTUAL HISTORY**

On February 25, 2013 appellant, then a 54-year-old mail processing clerk, filed an occupational disease claim alleging severe pain in both legs, feet and ankles, and numbness in the left heel as a result of walking and sitting for long periods at work for 28 years.

In an April 22, 2013 decision, OWCP denied appellant's occupational disease claim. It found the evidence insufficient to establish that the alleged exposures occurred as described. Further appellant did not submit any medical evidence providing a firm medical diagnosis in connection with the occupational exposure.

In an undated appeal request form postmarked September 16, 2013 and received by OWCP on September 24, 2013, appellant requested a review of the written record by a hearing representative.

Medical reports dated April 17 to August 14, 2013 from Dr. Ronnie D. Shade, an attending Board-certified orthopedic surgeon, assessed appellant as having arthralgia and calcaneal spurs of both feet and bursitis of the left heel posteriorly causally related to her employment. Dr. Shade restricted her to light-duty work.

A May 20, 2013 laboratory report stated that appellant's urinalysis test results were negative.

In an October 30, 2013 decision, OWCP denied appellant's request for a review of the written record as untimely filed. It exercised its discretion and determined that the issue could be equally well addressed by appellant requesting reconsideration before OWCP and submitting evidence not previously considered which established that she sustained an injury while in the performance of duty.

## **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 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.<sup>3</sup> The 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>4</sup> A claimant is entitled to a hearing or review of the written record as a matter of right if the request is filed within 30 days.<sup>5</sup>

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<sup>2</sup> *Id.* at § 8124(b)(1).

<sup>3</sup> 20 C.F.R. § 10.615.

<sup>4</sup> *Id.* at § 10.616(a).

<sup>5</sup> *See Leona B. Jacobs*, 55 ECAB 753 (2004).

While a claimant may not be entitled to a hearing or review of the written record as a matter of right if the request is untimely, OWCP has the discretionary authority to grant the request and must properly exercise such discretion.<sup>6</sup>

### **ANALYSIS**

In its April 22, 2013 decision, OWCP denied appellant's occupational disease claim finding that the evidence did not establish that the injury or event occurred as described and that she did not provide any medical evidence containing a medical diagnosis in connection with the injury or events. In an appeal request form postmarked September 16, 2013, appellant requested a review of the written record. The Board notes that her request was postmarked more than 30 days after the April 22, 2013 decision. Consequently, her request was not timely filed and she was not entitled to a review of the record as a matter of right.<sup>7</sup>

OWCP has the discretionary authority to grant a review of the written record even though a claimant is not entitled to such as a matter of right. In its October 30, 2013 decision, it properly exercised its discretion by notifying appellant that it had considered the matter in relation to the issue involved and determined that additional argument and evidence could be submitted with a request for reconsideration. The Board has held that the only limitation on OWCP's authority is reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.<sup>8</sup> The Board finds that OWCP did not abuse its discretion in this case by denying appellant's request for a review of the written record.

On appeal, appellant contended that she had submitted all paperwork and forms to OWCP. She described the pain in her leg, foot, ankle and back. The Board does not have jurisdiction over the merits of appellant's claim. The evidence submitted by her does not establish that she had timely filed a request for a review of the written record within 30 days of OWCP's April 22, 2013 decision. The Board finds, therefore, that OWCP properly denied appellant's request as being untimely.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for a review of the written record as untimely filed under section 8124.

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<sup>6</sup> 20 C.F.R. § 10.616(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

<sup>7</sup> *Supra* note 4.

<sup>8</sup> *See Teresa M. Valle*, 57 ECAB 542 (2006); *Daniel J. Perea*, 42 ECAB 214 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 22, 2014  
Washington, DC

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

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

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