

FACTUAL HISTORY

On April 17, 2013 appellant, then a 50-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome in the performance of duty on or before January 1, 1990.³ She did not stop work at the time she filed her claim.

In an April 24, 2013 letter, OWCP advised appellant of the evidence needed to establish her claim, including a detailed description of the employment factors alleged to have caused or contributed to the claimed condition and a medical report from her attending physician explaining how and why those tasks would result in the onset of carpal tunnel syndrome. Appellant was afforded 30 days to submit such evidence. She did not submit additional evidence prior to June 24, 2013.

By decision dated June 24, 2013, OWCP denied appellant's claim. It found that she had not established the factual component of fact of injury, as she has not submitted factual evidence establishing that the work activities occurred as she described. OWCP also noted that appellant had not submitted any medical evidence.

In a letter dated September 20, 2013, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. She submitted a description of her job duties and a chronology of her symptoms.

By decision dated January 7, 2014, OWCP denied appellant's September 20, 2013 request for a review of the written record. It found that her request was not timely filed within 30 days of the June 24, 2013 decision. OWCP exercised its discretion by performing a limited review of the evidence and further denied appellant's request as the issue in the case could be addressed equally well pursuant to a valid request for reconsideration.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA states unequivocally that a claimant not satisfied with a decision of OWCP has a right, upon timely request, to a hearing before an OWCP representative.⁴ Section 10.615 of Title 20 of the Code of Federal Regulations provide that a hearing is a review of an adverse decision by an OWCP hearing representative. Initially, the claimant can choose between two formats: an oral hearing; or a review of the written record.⁵

A claimant is not entitled to a hearing or review of the written record as a matter of right if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark or other carrier's date marking of the request.⁶ OWCP has discretion, however, to

³ In 1990, appellant was employed at a different federal agency. She remained in continuous federal employment through the time she filed her claim in April 2013.

⁴ 5 U.S.C. § 8124(b)(1). *See A.B.*, 58 ECAB 546 (2007); *Joe Brewer*, 48 ECAB 411 (1997).

⁵ 20 C.F.R. § 10.615.

⁶ *Id.* at § 10.616(a).

grant or deny a request that is made after this 30-day period.⁷ In such a case, it will determine whether to grant a discretionary hearing or review and, if not, will so advise the claimant with reasons.⁸

ANALYSIS

On June 24, 2013 OWCP denied appellant's claim for bilateral carpal tunnel syndrome on the grounds that fact of injury was not established. Appellant's letter requesting a review of the written record was dated September 20, 2013, more than 30 days after issuance of the June 24, 2013 decision. OWCP properly found that appellant's request for a review of the written record was not timely filed under section 8124(b)(1) of FECA such that she was not entitled to a review of the record as a matter of right.

OWCP exercised its discretion and denied appellant's request for a review of the written record on the additional grounds that she could address the causal relationship issue in her case equally well by submitting relevant evidence accompanying a request for reconsideration. Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP's June 24, 2013 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for a review of the written record.⁹

On appeal appellant asserted that she delayed filing a claim and submitting evidence as she was afraid of being sent home without pay for claiming an occupational injury. As noted, the Board does not have jurisdiction over the merits of the case on the present appeal. The Board may review only the January 7, 2014 nonmerit decision denying appellant's request for a hearing.

CONCLUSION

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

⁷ G.W., Docket No. 10-782 (issued April 23, 2010). *See also Herbert C. Holley*, 33 ECAB 140 (1981).

⁸ *Id.* *See also Rudolph Bermann*, 26 ECAB 354 (1975).

⁹ *See Gerard F. Workinger*, 56 ECAB 259 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 7, 2014 is affirmed.

Issued: August 14, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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