

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

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**K.K., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Buffalo, NY, Employer**

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**Docket No. 14-1527  
Issued: November 5, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On June 25, 2014 appellant filed a timely appeal from the June 11, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). 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 over this nonmerit decision. The last merit decision of record was the April 15, 2013 decision of OWCP. Because more than 180 days elapsed from issuance of the last merit decision to the filing of this appeal on June 25, 2014, the Board lacks jurisdiction to review the merits of this claim.<sup>2</sup>

**ISSUE**

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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See 20 C.F.R. §§ 501.2(c) and 501.3.

## **FACTUAL HISTORY**

OWCP accepted that on October 24, 2004 appellant, then a 47-year-old mail handler, sustained a lumbar sprain/strain due to moving an all-purpose container filled with mail. Appellant stopped work on October 24, 2004 and returned to his regular work the next day.

Appellant claimed that he sustained disability from October 27, 2004 to April 15, 2005 due to his October 24, 2004 work injury. OWCP denied his claim in decisions dated February 3, 2006, May 15, 2008 and August 4, 2009. The Board affirmed its denial of appellant's disability claim in decisions dated January 15, 2009<sup>3</sup> and May 18, 2010.<sup>4</sup>

In late March 2012, appellant requested authorization from OWCP for several medical procedures, including epidural steroid injection of his cervical, thoracic and lumbosacral spines and destruction by neurolytic agent injection of the facet joints of his lumbosacral spine.

In an April 15, 2013 decision, OWCP denied appellant's March 2012 request for authorization of the medical procedures. It found that the medical evidence did not establish that the procedures were necessary to treat his October 24, 2004 work injury.

In a letter dated June 1, 2014 and postmarked June 2, 2014, appellant requested a review of the written record by an OWCP hearing representative.<sup>5</sup>

In a June 11, 2014 decision, OWCP denied appellant's request for a review of the written record. It found that his request was untimely because OWCP's last merit decision was issued on April 15, 2013 and his request for a review of the written record was postmarked on June 2, 2014. Since appellant's request was after 30 days, he was not, as a matter of right, entitled to a review of the written record. OWCP considered his request for a review of the written record, and exercising its discretion, determined that the issue in this case could equally well be addressed by requesting reconsideration from the district office and submitting evidence not previously considered addressing the causal relation between the requested medical procedures and a work-related condition.

## **LEGAL PRECEDENT**

Section 8124 of FECA provides that a claimant is entitled to a hearing before an OWCP representative when a request is made within 30 days after issuance of an OWCP final decision.<sup>6</sup> OWCP's regulations have expanded section 8124 to provide the opportunity for a "review of the written record" before an OWCP hearing representative in lieu of an "oral hearing."<sup>7</sup> It has

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<sup>3</sup> Docket No. 08-1829 (issued January 15, 2009).

<sup>4</sup> Docket No. 09-2206 (issued May 18, 2010).

<sup>5</sup> Appellant did not identify a particular OWCP decision, but the April 15, 2013 decision was the last decision issued by OWCP at the time of his request.

<sup>6</sup> 5 U.S.C. § 8124.

<sup>7</sup> 20 C.F.R. §§ 10.616, 10.618. The date of the request is determined by the postmark or other carrier's date marking. *Id.* at § 10.616(a).

provided that such review of the written record is also subject to the same requirement that the request be made within 30 days of OWCP's final decision.<sup>8</sup>

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.<sup>9</sup> The principles underlying OWCP's authority to grant or deny a written review of the record are analogous to the principles underlying its authority to grant or deny a hearing. OWCP's procedures, which require OWCP to exercise its discretion to grant or deny a request for a review of the written record when such a request is untimely or made after reconsideration or an oral hearing, are a proper interpretation of FECA and Board precedent.<sup>10</sup>

### ANALYSIS

Appellant's June 2, 2014 request for a review of the written record was made more than 30 days after the date of issuance of OWCP's prior decision dated April 15, 2013. Thus, he was not entitled to a review of the written record as a matter of right.<sup>11</sup> OWCP properly found its June 11, 2014 decision that appellant was not entitled to a review of the written record as a matter of right because his request was not made within 30 days of the April 15, 2013 decision.

OWCP also has the discretionary power to grant a review of the written record when a claimant is not entitled to a review of the written record as a matter of right. In its June 11, 2014 decision, it considered appellant's request for a review of the written record. OWCP determined that the issue in this case could equally well be addressed by requesting reconsideration from the district office and submitting evidence not previously considered which addressed the causal relation between the requested medical procedures and a work-related condition. The Board has held that as 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>12</sup> In the present case, the evidence of record does not establish that OWCP abused its discretion by denying appellant's request for a review of the written record.<sup>13</sup>

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<sup>8</sup> See *Michael J. Welsh*, 40 ECAB 994 (1989).

<sup>9</sup> *Henry Moreno*, 39 ECAB 475 (1988).

<sup>10</sup> See *supra* note 8.

<sup>11</sup> Appellant requested a review of the written record in a document postmarked June 2, 2014 and, therefore, his request was made on June 2, 2014. See *supra* note 7.

<sup>12</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>13</sup> On appeal, appellant argued that OWCP did not adequately pay for medical treatment of his back condition. However, the merits of his claim are not currently before the Board and he did not show that his request for review of the written record was timely filed.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 11, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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