

ISSUE

The issue is whether OWCP abused its discretion in denying appellant's request for a review of the written record as untimely filed.

FACTUAL HISTORY

On August 29, 2013 appellant, then a 45-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right foot injury when she was opening a gate.³

By letter dated November 25, 2013, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence required from her and was directed to submit such evidence within 30 days. No response or evidence was received from appellant.

By decision dated January 16, 2014, OWCP denied appellant's claim finding that the evidence did not establish that the incident occurred as alleged. It also noted that appellant failed to establish that she sustained an injury as no medical evidence had been submitted.

In an appeal request form dated February 10, 2014, appellant requested review of the written record before the Branch of Hearings and Review. The request was postmarked February 20, 2014 and received on February 21, 2014. In support of her claim, appellant submitted a February 3, 2014 progress note from Dr. John E. Bubser, a Board-certified podiatrist.

By decision dated June 27, 2014, the Branch of Hearings and Review denied appellant's request for a review of the written record finding that her request was not made within 30 days of the January 16, 2014 OWCP decision. The Branch of Hearings and Review further determined that the issue in the case could equally well be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which established that she sustained a work-related traumatic injury in the performance of duty.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that before review under section 8128(a) of this title, 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.⁴ 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.⁵ OWCP regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the

³ The Board notes that the date of the employment incident is illegible.

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. § 10.615.

claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁶

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA,⁷ 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.⁸

ANALYSIS

In the present case, the request for review of the written record of OWCP's January 16, 2014 decision was postmarked on February 20, 2014 and received on February 21, 2014. Appellant's request was sent more than 30 days after the date of issuance of OWCP's merit decision. Therefore, OWCP properly found in its June 27, 2014 decision that appellant was not entitled to an oral hearing or examination of the written record as a matter of right.⁹

The Branch of Hearings and Review properly exercised its discretion when it considered the matter and advised that the issue of fact of injury could be addressed through a reconsideration application. The Board has held that the only limitation on OWCP's authority is reasonableness and an 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.¹⁰ In this case, the evidence of record does not indicate that OWCP abused its discretion in its denial of appellant's request for an examination of the written record. Accordingly, the Board finds that OWCP properly denied her request.¹¹

On appeal, appellant submitted additional evidence after OWCP rendered its June 27, 2014 decision. As previously noted, the Board may not review this evidence for the first time on appeal.¹² Appellant also argued that OWCP did not stipulate a deadline to submit evidence. The Board notes that the November 25, 2013 development letter stated that appellant had 30 days to submit the required information. The Board further notes that OWCP's January 16, 2014 denial of appellant's claim was accompanied with appeal rights which provided a timeline and instructions pertaining to the different forms of appeal. Thus, the Board finds her argument without merit.

⁶ *Id.* at § 10.616(a).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

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

¹⁰ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹¹ *D.P.*, Docket No. 14-308 (issued April 21, 2014); *D.J.*, Docket No. 12-1332 (issued June 21, 2013).

¹² *Supra* note 4.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 27, 2014 is affirmed.

Issued: April 13, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board