

ISSUE

The issue is whether OWCP properly denied appellant's request for a merit review.

On appeal he asserts that he could not submit his request in a timely manner because he could not obtain documentation from his physician. He further asserts that the medical evidence of record establishes his claim.

FACTUAL HISTORY

On September 30, 2014 appellant, then a 38-year-old postal support employee, filed a traumatic injury claim alleging that on September 19, 2014 he felt a pop in his right forearm as he was gripping and lifting a package out of a hamper. He did not stop work. In an attached statement, appellant related that his arm continued to hurt daily, with numbness and burning.

The employing establishment controverted the claim, stating that the claimed injury did not hinder appellant's work from September 19 until October 1, 2014. Appellant was offered and accepted modified duty on October 15, 2014. By letter dated October 24, 2014, OWCP informed him of the evidence needed to support his claim.

In support of his claim, appellant submitted October 1, 2014 reports from Dr. Lynn M. Robinson, a Board-certified internist, who reported a history that appellant injured his right hand at work on September 19, 2014 when he lifted a box. Dr. Robinson described physical examination findings of decreased sensation of the fingertips of his right hand, diagnosed ulnar neuropathy at the elbow, and advised that he could work modified duty.

In reports dated October 9 to December 1, 2014, Dr. Richard D. Trifilo, Board-certified in family and occupational medicine, described appellant's complaints of burning pain, tingling, and numbness in his right arm and hand since lifting a box at work on September 19, 2014. Examination demonstrated positive Phalen's and Tinel's signs on the right. Dr. Trifilo diagnosed neuritis of the right median nerve with sprain/strain and provided restrictions to appellant's physical activity.

In a December 10, 2014 decision, OWCP denied the claim, finding the medical evidence insufficient to establish that the work incident of September 19, 2014 caused and/or aggravated his condition.

By letter dated January 7, 2015 and postmarked January 10, 2015, appellant requested a review of the written record.

By decision dated January 23, 2015, an OWCP hearing representative denied appellant's request for a review of the written record as untimely filed. OWCP considered the request and determined that his case could equally be addressed by requesting reconsideration with OWCP and submitting new evidence.

LEGAL PRECEDENT

A claimant dissatisfied with a decision of OWCP shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral

hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. If the request is not made within 30 days, or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.⁴ 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.⁵

ANALYSIS

As noted above, a request for a review of the written record must be made within 30 days after the date of the issuance of OWCP's final decision.⁶ In this case, appellant requested a review of the written record before OWCP's Branch of Hearings and Review on a form dated January 7, 2015 and postmarked January 10, 2015. Under OWCP's regulations, the timeliness of a hearing request, or request for a review of the written record, is based on the date of the postmark.⁷ Thirty days following the December 10, 2014 decision was Thursday, January 9, 2015. Appellant's request was not postmarked until January 10, 2015. The request was, therefore, untimely.

OWCP also has the discretionary power to grant a request for a hearing or review of the written record when a claimant is not entitled to such as a matter of right. In the January 23, 2015 decision, it properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that the issue could be addressed through a reconsideration application. 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.⁸ In the present case, the evidence of record does not indicate that OWCP committed any act in connection with its denial of appellant's request for a review of the written record that could be found to be an abuse of discretion.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for a review of the written record.⁹

⁴ *Claudio Vazquez*, 52 ECAB 496 (2001).

⁵ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁶ *Supra* note 4.

⁷ 20 C.F.R. § 10.616(a) (the hearing 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).

⁸ *See Mary Poller*, 55 ECAB 483 (2004).

⁹ Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of its December 10, 2014 merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2015
Washington, DC

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

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

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