

bands from bundles of mail in the performance of duty. Appellant's attending physician, Dr. Edwin D. Harrington, a Board-certified orthopedic surgeon, diagnosed moderate carpal tunnel syndrome in the left arm. Appellant underwent electrodiagnostic testing which indicated moderate right median nerve mononeuropathy at the wrist or carpal tunnel syndrome. By decision dated December 10, 2008, OWCP accepted his claim for left carpal tunnel syndrome. Dr. Harrington performed appellant's left carpal tunnel release on January 26, 2009. Appellant returned to light-duty work on March 3, 2009 and full duty on April 10, 2009.

On February 19, 2010 Dr. Harrington diagnosed left wrist osteoarthritis. He referred appellant to a rheumatologist on November 24, 2010. Dr. Harrington examined appellant on April 27, 2011 and found swelling over the left wrist extensors. He diagnosed intersection syndrome left wrist consistent with tendinitis. Appellant reported left wrist pain on July 15, 2011 and Dr. Harrington provided work restrictions. Appellant underwent a magnetic resonance imaging (MRI) scan which demonstrated a degenerative tear within the scapholunate ligament, advanced left wrist arthropathy, and flexor carpal radialis tenosynovitis with multiple ganglia type cysts. On August 5, 2011 Dr. Harrington diagnosed carpal tunnel syndrome on the left and left wrist arthritis.

Dr. Steven L. Moran, a Board-certified plastic and hand surgeon, examined appellant on September 19, 2011 and diagnosed Kienbock's disease with a large cyst in the right wrist and grade 1 scaphoid lunate advanced collapse arthritis on the left. Appellant underwent right wrist four corner fusion on October 10, 2012. He returned to work on January 21, 2013 following this procedure.

Appellant filed a claim for a recurrence of disability on April 4, 2013 alleging on March 20, 2013 he became disabled as a result of his October 15, 2008 employment injury. He stated that following his return to work on January 21, 2013 he developed left wrist pain radiating to his fingers. Appellant stated that he experienced swelling in the fingers of his left hand and his physician found he was disabled. Dr. Moran submitted a report dated March 21, 2013 diagnosed episodic synovitis over the metacarpal phalangeal (MCP) joints. He recommended left wrist surgical fusion.

In a letter dated October 2, 2013, OWCP requested additional factual and medical evidence in support of appellant's alleged recurrence of disability. Appellant responded and stated that he was using his left wrist more due to his right wrist pain. He listed his employment duties as lifting, sweeping, and carrying mail. Appellant stated that he believed that he was compensating for his right wrist condition. He stated that he returned to work four hours a day on April 1 through September 2, 2013.

By decision dated December 13, 2013, OWCP denied appellant's claim for recurrence of disability finding that he failed to submit the necessary medical opinion evidence to establish a spontaneous change in his employment-related left wrist condition resulting in disability for work.

Appellant requested a review of the written record and reconsideration *via* a form dated October 10, 2014 and received by OWCP on November 4, 2014. The form was postmarked October 31, 2014.

By decision dated December 19, 2014, the OWCP Branch of Hearings and Review denied appellant's request for a review of the written record as a matter of right, finding his October 31, 2014 request was made more than 30 days after the December 13, 2013 OWCP decision. The Branch of Hearings and Review further considered his case and 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 he had sustained a recurrence of disability.²

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.³ 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.⁴ 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 claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁵

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA,⁶ has the power to hold hearings and reviews of the written record in certain circumstances where no legal provision was made for such reviews and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing or review of the written record.⁷ OWCP procedures, which require OWCP to exercise its discretion to grant or deny a hearing or review of the written record when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.⁸

ANALYSIS

In the present case, appellant requested review of the written record on October 31, 2014. His request was made more than 30 days after the date of issuance of OWCP's December 13, 2013 merit decision. Therefore, OWCP properly found in its December 19, 2014 decision that appellant was not entitled to an oral hearing or examination of the written record as a matter of right because his request was not made within 30 days of its December 13, 2013 decision.

² The Board notes that appellant also requested reconsideration from OWCP on November 4, 2014. Upon return of the case record, OWCP should address this timely request for reconsideration.

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

⁵ *Id.* at § 10.616(a).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁸ *Teresa M. Valle*, 57 ECAB 542 (2006).

OWCP then properly exercised its discretion by stating that it had considered the matter and had denied appellant's request for an examination of the written record because the issue of recurrence of disability could be addressed through the 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.⁹ In this case, the evidence of record does not indicate that OWCP abused its discretion in its denial of appellant's request for a review of the written record. Accordingly, the Board finds that OWCP properly denied his request.

CONCLUSION

The Board finds that OWCP's Branch of Hearings and Review properly denied appellant's request for a review of the written record on the grounds that the request was untimely and could be addressed through the reconsideration process.

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2015
Washington, DC

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

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

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

⁹ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).