

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

E.T., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
CENTRAL ARKANSAS HEALTHCARE
SYSTEM, Little Rock, AR, Employer**

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**Docket No. 17-1201
Issued: August 11, 2017**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 10, 2017 appellant filed a timely appeal from an April 27, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed since March 24, 2016, the date of the most recent OWCP merit decision, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's request for a review of the written record before the Branch of Hearings and Review as untimely filed under 5 U.S.C. § 8124(b).

¹ 5 U.S.C. § 8101 *et seq.*

On appeal appellant contends that she did not receive notice of OWCP's March 24, 2016 decision until April 2017. She contacted OWCP and learned that it had already issued a final decision.

FACTUAL HISTORY

On January 27, 2016 appellant, then a 59-year-old file clerk, filed an occupational disease claim (Form CA-2) for a mental illness. She alleged that she first became aware of her condition and its relationship to her employment on January 24, 2016. Appellant asserted that she experienced a really bad headache, shaking, an anxiety attack, crying for no reason, weight loss, sadness, and nervousness. She ate only once a day. Appellant did not submit any additional evidence.

In a February 1, 2016 letter, the employing establishment controverted appellant's claim. It contended that she did not submit any factual or medical evidence to establish an emotional condition in the performance of duty.

By letter dated February 1, 2016, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries. It also requested that the employing establishment respond to her allegations and submit evidence regarding her work duties and accommodations it provided to reduce her stress. OWCP mailed this letter to appellant's address of record.

OWCP received a letter dated January 26, 2016 that was signed by Matthew R. Frederick, a social worker, and cosigned by Dr. David Haas, a Board-certified psychiatrist. The report recommended, among other things, that appellant not return to work until she had resolved the acute stress she was currently experiencing based on her psychiatric evaluation and an intake assessment. The report revealed that she was retiring from her current position on January 30, 2016.

In a February 23, 2016 letter, J.Y., appellant's supervisor, responded to OWCP's queries. She took issue with appellant's allegations. J.Y. asserted that she did not become aware of appellant's claimed emotional condition until after appellant had retired. She contended that there were no stressful aspects of appellant's job. J.Y. related that no accommodations were made because she did not request or mention the need for any accommodations to complete her file clerk tasks and appellant was able to perform her required duties. She submitted a copy of appellant's file clerk position description.

In a March 24, 2016 decision, OWCP denied appellant's occupational disease claim. It found that she had not submitted sufficient factual evidence to establish that the incidents occurred as alleged. OWCP noted that appellant did not respond to its February 1, 2016 development letter. The decision was mailed to appellant's address of record.

On March 31, 2017 appellant informed OWCP that she did not receive its March 24, 2016 decision. OWCP verified that her mailing address was correct and resent another copy of its decision.²

In an appeal request form dated and postmarked April 17, 2017, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. She submitted several visit summary reports, correspondence and e-mails between herself and the employing establishment, her own statements, and witness statements contemporaneous with her request for review.

By decision dated April 27, 2017, OWCP's Branch of Hearings and Review denied appellant's request for a review of the written record as a matter of right as it was untimely filed. It noted that OWCP had issued its decision on March 24, 2016, while her request was postmarked April 17, 2017. The Branch of Hearings and Review found that appellant's request was submitted more than 30 days after OWCP's merit decision. After exercising its discretion, it further found that the issue in the case could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that 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 Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁴ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.⁵ Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.⁶ The Board has held that OWCP must exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).⁷

² The record does not contain a copy of the March 24, 2016 decision OWCP resent to appellant.

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. §§ 10.616, 10.617.

⁵ *Id.* at § 10.616(a).

⁶ *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁷ *See R.T.*, Docket No. 08-408 (issued December 16, 2008).

ANALYSIS

The Board lacks jurisdiction to review the merits of the underlying issue of whether appellant sustained an emotional condition in the performance of duty. The Board's jurisdiction is strictly limited to determining whether OWCP properly denied her request for a review of the written record.

By decision dated March 24, 2016, OWCP denied appellant's occupational disease claim for an emotional condition. In an appeal request form postmarked April 17, 2017, appellant requested a review of the written record. A request for a review of the written record must, as noted above, be made within 30 days after the date of the issuance of OWCP's final decision. The Board finds that OWCP properly determined, in its April 27, 2017 decision, that appellant's request for a review of the written record was untimely as it was filed more than 30 days after the issuance of OWCP's March 24, 2016 decision. Because the postmark date was more than 30 days after the date of OWCP's March 24, 2016 decision, she was not entitled to a review of the written record as a matter of right.⁸

The Board further finds that OWCP properly exercised its discretion in denying appellant's request for a review of the written record by determining that the issue in the case could be addressed equally as well by requesting reconsideration and submitting new evidence relevant to the issue at hand.⁹ The Board has held that the only limitation on OWCP's discretionary authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to logic and probable deduction from established facts.¹⁰ In this case, the evidence of record does not indicate that OWCP abused its discretion in denying appellant's request for a review of the written record under these circumstances. Accordingly, the Board finds that OWCP properly denied appellant's request for a review of the written record.

On appeal appellant contends that she did not receive notice of OWCP's March 2016 decision until April 2017. She contacted OWCP and learned that it had already issued a final decision. The record reveals that the March 24, 2016 OWCP decision was sent to appellant's address of record. Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is known as the mailbox rule.¹¹ Appellant did not submit sufficient evidence to rebut the presumption of receipt.¹²

⁸ The 30-day period for determining the timeliness of an employee's request for an oral hearing or review commences the day after the issuance of OWCP's decision. See *Donna A. Christley*, 41 ECAB 90 (1989).

⁹ *D.P.*, Docket No. 14-0308 (issued April 21, 2014); *D.J.*, Docket No. 12-1332 (issued June 21, 2013); *Mary B. Moss*, 40 ECAB 640, 647 (1989).

¹⁰ See *R. G.*, Docket No. 16-0994 (issued September 9, 2016); *Teresa M. Valle*, 57 ECAB 542 (2006); *Daniel J. Perea*, 42 ECAB 214 (1990).

¹¹ *James A. Gray*, 54 ECAB 277 (2002).

¹² See *Nelson R. Hubbard*, 54 ECAB 156 (2002).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for a review of the written record before the Branch of Hearings and Review as untimely filed under 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 11, 2017
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board