



## 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).

## FACTUAL HISTORY

On January 13, 2017 appellant, then a 58-year-old mail handler equipment operator, filed a traumatic injury claim (Form CA-1) alleging that, on January 11, 2017, she sustained right leg, knee, and shoulder injuries when trying to contain a tub that was spinning out of control. She stopped work, notified her supervisor, and first received medical care on the date of injury.

In support of her claim, appellant submitted a January 11, 2017 summary from Good Samaritan Hospital Emergency Department documenting treatment for a knee sprain.

By development letter dated February 6, 2017, OWCP notified appellant that when her claim had been received, it appeared to be a minor injury, which resulted in minimal or no lost time from work, and payment of a limited amount of medical expenses was administratively approved. It reopened the claim for consideration because appellant had not returned to work in a full-time capacity. OWCP advised appellant of the type of medical and factual evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.

In support of her claim, appellant submitted medical reports, diagnostic studies, and work restrictions dated January 17 through March 7, 2017 documenting treatment for her right knee condition. In January 17 and February 6, 2017 medical reports, Dr. Robert Lippe, a Board-certified orthopedic surgeon, diagnosed right knee sprain, right knee tear of the medial meniscus, and primary osteoarthritis of the right knee. In reports dated February 7 and March 7, 2017, Dr. Michael Carroll, a Board-certified orthopedic surgeon, diagnosed tear of the medial meniscus and primary osteoarthritis of the right knee. He administered joint injections for treatment.

By decision dated April 14, 2017, OWCP denied appellant's claim, finding that the medical evidence of record failed to establish that her diagnosed right knee condition was causally related to the accepted January 11, 2017 employment incident.

On an appeal request form dated May 12, 2017, appellant requested review of the written record before an OWCP hearing representative. The request was postmarked May 17, 2017 and received by OWCP on May 22, 2017. In support of her claim, appellant submitted additional medical reports dated January 11 through April 25, 2017 documenting treatment for her right knee injury.

By decision dated June 6, 2017, an OWCP hearing representative denied appellant's request for a review of the written record finding that her request was not made within 30 days of the April 14, 2017 OWCP decision. He 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 appellant's diagnosed condition was causally related to the accepted January 11, 2017 employment incident.

## LEGAL PRECEDENT

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before a representative of OWCP's Branch of Hearings and Review, provides in pertinent part: "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 claim before a representative of the Secretary."<sup>4</sup> 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.<sup>5</sup> As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.<sup>6</sup> OWCP's regulations and Board precedent provide that the request for an oral hearing or review of the written record must be sent within 30 days of the date of issuance of the decision (as determined by the postmark or other carrier's date marking) for which an oral hearing or review of the written record is sought.<sup>7</sup>

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA,<sup>8</sup> 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> OWCP procedures, which require OWCP to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.<sup>10</sup>

## ANALYSIS

The Board finds that OWCP properly found in its June 6, 2017 decision that appellant was not entitled to a review of the written record as a matter of right because her request was not made within 30 days of its April 14, 2017 decision.<sup>11</sup>

Appellant's May 12, 2017 request for review of the written record was postmarked on May 17, 2017. As noted the request for review of the written record must be sent within 30 days of the date of issuance of the decision as determined by the postmark or other carrier's date

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<sup>4</sup> 5 U.S.C. § 8124(b)(1).

<sup>5</sup> 20 C.F.R. § 10.615.

<sup>6</sup> *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

<sup>7</sup> *Supra* note 5 at § 10.616(a).

<sup>8</sup> 5 U.S.C. § 8101 *et seq.*

<sup>9</sup> *Marilyn F. Wilson*, 52 ECAB 347 (2001).

<sup>10</sup> *Teresa M. Valle*, 57 ECAB 542 (2006).

<sup>11</sup> *Supra* note 8; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

marking.<sup>12</sup> The time limitation to request a review of the written record by OWCP's Branch of Hearings and Review expired on May 15, 2017, 30 days after the April 14, 2017 decision.<sup>13</sup> Therefore, OWCP properly found in its June 6, 2017 decision that appellant was not entitled to a review of the written record as a matter of right because her request was not made within 30 days of its April 14, 2017 decision.<sup>14</sup>

While OWCP also has the discretionary power to grant a review of the written record when a claimant is not entitled to a review as a matter of right, OWCP's hearing representative, in her June 6, 2017 decision, properly exercised her discretion by indicating that she had carefully considered appellant's request and had determined that the issue of the case could equally well be addressed by requesting reconsideration and submitting additional evidence in support of her claim for a work-related traumatic injury. 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.<sup>15</sup> In this case, the evidence of record does not indicate that OWCP abused its discretion in its denial of appellant's request for review of the written record. Accordingly, the Board finds that OWCP properly denied her request.<sup>16</sup>

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for a review of the written record under section 8124(b) of FECA as it was untimely filed.

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<sup>12</sup> *Supra* note 7.

<sup>13</sup> The Board notes that the 30-day time limitation ran on Sunday, May 14, 2017. Because the time limitation expired on a nonbusiness day, the limitation is extended to include the next business day, Monday, May 15, 2017. *See M.H.*, Docket No. 13-1901 (issued January 8, 2014); *Debra McDavid*, 57 ECAB 149, 150 (2005); *Angel M. Lebron, Jr.*, 51 ECAB 488, 490 (2000); *Gary J. Martinez*, 41 ECAB 427, 427-28 (1990).

<sup>14</sup> *Supra* note 7.

<sup>15</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>16</sup> *D.P.*, Docket No. 14-308 (issued April 21, 2014); *D.J.*, Docket No. 12-1332 (issued June 21, 2013).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 6, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2018  
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