

ISSUE

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

FACTUAL HISTORY

On September 20, 2015 appellant, then a 53-year-old practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on August 26, 2015 he was assisting a patient with washing and dressing when he felt a pull in his back. He listed his injury as back strain/sciatica. Appellant stopped work on August 28, 2015 and returned to full-time work with restrictions on September 28, 2015. On November 4, 2015 OWCP accepted his claim for acute back strain. It expanded acceptance of appellant's claim on May 26, 2016 for temporary aggravation of lumbar degenerative disc disease L3-4 and L4-5 and right-sided L5-S1 herniated disc.

On October 27, 2016 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as he no longer had any residuals or continuing disability from work stemming from his August 26, 2015 work injury. On November 28, 2016 it terminated his benefits, effective the close of business on that date. OWCP provided appellant an appeal request form to inform him of his appeal rights. This form noted that if he decided to appeal the decision he must specify which procedure was pursued by checking one of the options on the form.

In an undated letter, with the subject line "[a]ppeal of the decision to deny compensation," received by OWCP on January 4, 2017, appellant discussed the facts of his work injury and his medical treatment. He requested that the denial of his claim be vacated and that he be allowed to have necessary treatment or surgery to make him whole again. By response dated January 5, 2017, OWCP indicated that appellant failed to submit the appeal request form which allowed him to choose his specific appeal right. It informed him that no development of an appeal could be initiated until he submitted the form and designated the specific appeal process he wished to pursue.

In a form dated December 23, 2016 and received by OWCP on January 18, 2017, appellant requested review of the written record before an OWCP hearing representative.

By decision dated April 18, 2017, OWCP denied appellant's request for review of the written record because his request was untimely filed. It also reviewed his request at its discretion, and determined that the relevant issue could equally well be addressed by requesting reconsideration and submitting new evidence establishing that he had disabling residuals from his accepted injury.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before an OWCP hearing representative, provides: Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of

this section 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

A hearing is a review of an adverse decision by an OWCP's hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.⁴

A request for either an oral hearing or a review of the written record must be sent, in writing, within 30 days of the date of the decision for which the hearing is sought.⁵ A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision.⁶

OWCP has discretion to grant or deny a request that is made after the 30-day period for requesting an oral hearing or review of the written record. In such a case, it will so advise the claimant with reasons.⁷

ANALYSIS

The Board lacks jurisdiction to review the merits of the underlying issue of whether OWCP properly terminated appellant's wage-loss compensation and medical benefits. The Board's jurisdiction is strictly limited to determining whether OWCP properly denied his request for a review of the written record.⁸

By decision dated November 28, 2016, OWCP terminated appellant's wage-loss compensation and medical benefits. 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.⁹ The Board finds that OWCP properly determined that appellant's request for review of the written record was untimely as it was filed more than 30 days after the issuance of OWCP's decision.

Appellant's first indication that he was interested in further review of the November 28, 2016 decision was received by OWCP on January 4, 2017. At that time, appellant filed an undated letter with OWCP indicating that he wished to "appeal" OWCP's denial of compensation. The undated document was scanned as received by OWCP on January 4, 2017.

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

⁵ *James Smith*, 53 ECAB 188 (2001); 20 C.F.R. § 10.616(a).

⁶ *See R.T.*, Docket No. 08-0408 (issued December 16, 2008).

⁷ *G.W.*, Docket No. 10-0782 (issued April 23, 2010).

⁸ *W.L.*, Docket No. 17-1538 (issued November 15, 2017).

⁹ 20 C.F.R. § 10.616(a).

This document, even if considered a request for review of the written record, was clearly untimely filed as it was not made within 30 days of OWCP's November 28, 2016 decision.

Furthermore, appellant did not request review of the written record in this document. At the time it issued its November 28, 2016 decision, OWCP sent him an appeal request form, and clearly informed him that he must specify which procedure he requested by checking one of the options. In the letter received on January 4, 2014, appellant did not list the option he wished to pursue. Accordingly, this letter was not an effective request for review of the written record.

After corresponding with OWCP, appellant later submitted an appeal request form requesting review of the written record. This document was date stamped by OWCP on January 24, 2017. This document was also not submitted within the 30-day time frame.

Although appellant's request for a review of the written record before an OWCP hearing representative was untimely, OWCP has the discretionary authority to grant the request and it must exercise such discretion.¹⁰ In its April 18, 2017 decision, OWCP properly determined that the issue in this case could equally well be addressed by requesting reconsideration and submitting evidence not previously considered which established that appellant had disabling residuals of his accepted injury. The Board has held that the only limitation on OWCP's 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 both logic and probable deductions from established facts.¹¹ In this case, the evidence of record does not indicate that OWCP abused its discretion by denial of appellant's request for a review of the written record.¹²

CONCLUSION

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

¹⁰ *Supra* note 8; see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.2(a) (October 2011).

¹¹ *Samuel R. Johnson*, 51 ECAB 612 (2000).

¹² *R.V.*, Docket No. 17-1286 (December 5, 2007).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 18, 2017 is affirmed.

Issued: January 19, 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