United States Department of Labor Employees' Compensation Appeals Board

A.D., Appellant)	
_))	
and) Docket No. 19-00) Issued: July 29, 2	
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS HEALTH ADMINISTRATION,)	
Richmond, VA, Employer)	
Appearances:	Case Submitted on the Re	cord
Appellant, pro se		
Office of Solicitor, for the Director		

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge PATRICIA H. FITZGERALD, Deputy Chief Judge JANICE B. ASKIN, Judge

On October 1, 2018 appellant filed a timely appeal from an August 2, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) that denied her request for a review of the written record as untimely filed. The Clerk of the Appellate Boards docketed the appeal as No. 19-0014.

The Board, having duly reviewed the case record, finds that OWCP erred in concluding that appellant's request for a review of the written record was untimely filed. Section 8124(b)(1) of the Federal Employees' Compensation Act provides that a claimant not satisfied with a decision of OWCP has a right, upon timely request, to a hearing or a review of the written record before a representative of OWCP.¹ A claimant is not entitled to a hearing or review of the written record if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark or other carrier's date marking of the request.²

¹ 5 U.S.C. § 8124(b)(1). See A.B., 58 ECAB 546 (2007); Joe Brewer, 48 ECAB 411 (1997).

² 20 C.F.R. § 10.616(a); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

Following OWCP's January 25, 2018 initial merit decision, appellant completed an appeal request form, postmarked on February 22, 2018. She requested an oral hearing, a review of the written record, and reconsideration by placing an x in each of the categories.

By letter dated March 23, 2018, OWCP notified appellant that it had received her appeal request form, however, she had selected multiple appeal options and it was unable to determine which option she was selecting. It requested that she select a single option. On April 26, 2018 OWCP received appellant's request for a review of the written record, postmarked April 17, 2018.

By decision dated August 2, 2018, OWCP denied appellant's request for review of the written record as untimely filed. It noted that her request was postmarked on April 17, 2018, and that because it was not made within 30 days of the January 25, 2018 decision, she was not, as a matter of right, entitled to a review of the written record.

The Board finds, however, that while appellant clarified and perfected her request for review of the written record in April 2018, her initial request for review was postmarked on February 22, 2018, within 30 days of the January 25, 2018 decision. As appellant's request for review of the written was timely filed on February 22, 2018, the Board will set aside the August 2, 2018 decision and remand the case for review of the written record by an OWCP hearing representative.

IT IS HEREBY ORDERED THAT the August 2, 2018 decision of the Office of Workers' Compensation Programs be set aside and the case is remanded for further action consistent with this order of the Board.

Issued: July 29, 2019 Washington, DC

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

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

Janice B. Askin, Judge Employees' Compensation Appeals Board