

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

C.H., Appellant)	
)	
and)	Docket No. 20-0540
)	Issued: December 1, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Waialua, HI, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 13, 2020 appellant filed a timely appeal from a September 19, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 has days elapsed from OWCP's last merit decision, dated July 2, 2019, 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 to review the merits of this claim.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP properly denied appellant's request for a review of the written record by an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On April 1, 2019 appellant, then a 60-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a knee condition due to factors of her federal employment. She explained that she initially thought her condition was related to a fall that previous year, but later indicated that it was repetitive in nature. Appellant indicated that she first realized her condition was caused or aggravated by her federal employment on March 16, 2019.

In an undated statement, appellant noted that she had been working full time for the employing establishment since 1997. Her job responsibilities included casing mail, lifting flats of magazines and large flat envelopes weighing up to 33 pounds, pulling down mail into a hard plastic tray weighing up to 44 pounds, and loading parcels of various weight into her mail truck. Appellant indicated that she initially believed she sustained a traumatic injury on March 16, 2018, but later found out that she had degenerative ligaments of the knees due to years of lifting mail.

In support of her claim, appellant submitted an April 1, 2019 report from Dr. Neelesh B. Fernandes, a Board-certified physiatrist, who noted that he had been treating appellant for injuries sustained on March 16, 2018 when she fell onto and twisted her left knee. Dr. Fernandes indicated that appellant had never been treated for knee conditions previously. He described appellant's job duties as including prolonged walking up to 10 miles per day and bending at the knees while sorting trays, rearranging parcels, and casing mail at work. Dr. Fernandes noted that a July 20, 2018 x-ray showed mild osteoarthritis of the knee. He opined that appellant's listed job duties would be enough to cause osteoarthritis due to repetitive use and that the fall on March 16, 2018 would be enough to aggravate her osteoarthritis.

In a development letter dated April 15, 2019, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical information needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a May 5, 2019 response to OWCP's development questionnaire, appellant reiterated that she was first employed by the employing establishment in 1992. She detailed her work duties over the years, as well as her current daily work routine, which included sorting and bundling mail, lifting tubs and trays weighing up to 44 pounds, and loading them into her mail truck. Appellant asserted that she had no problems with her knees until March 16, 2018 when she slipped when attempting to step into her truck and landed on her left side. Following the fall, she alleged that she had pain in her knee and could barely walk. Appellant was subsequently advised by her doctors that the fall aggravated her degenerated knee condition.

Dr. Fernandes, in an industrial work status report dated June 3, 2019, diagnosed arthritis of the left knee, left knee anterior cruciate ligament (ACL) sprain, left knee joint pain, and left knee sprain. He released appellant to return to work without restrictions on June 3, 2019. In an

office visit note of even date, Dr. Fernandes noted that he had treated appellant for arthritis of the left knee, knee ligament sprain, left knee joint pain, and knee pain.

By decision dated July 2, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed left knee conditions and the accepted factors of her federal employment.

On an appeal request form dated August 25, 2019, postmarked August 26, 2019 and received by OWCP on September 5, 2019, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated September 19, 2019, OWCP's hearing representative denied appellant's request for a review of the written record, finding that the request was untimely as it was not postmarked within 30 days of the July 2, 2019 decision. After exercising its discretion, the hearing representative informed appellant that the merits of the claim could equally well be addressed by requesting reconsideration and submitting evidence not previously considered.

LEGAL PRECEDENT

Section 8124 FECA, concerning a claimant's entitlement to a hearing before an OWCP hearing representative, provides that a claimant is entitled to a hearing before an OWCP representative when a request is made 30 days after issuance of an OWCP final decision.³

A hearing is a review by an OWCP hearing representative of a final adverse decision issued by an OWCP district office.⁴ Initially, the claimant can choose between either 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.⁵ 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.⁶ 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.⁷

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.⁸

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.616.

⁵ *Id.* at § 10.615.

⁶ *Id.* at § 10.616(a); *T.C.*, Docket No. 20-0090 (issued February 13, 2020); *M.H.*, Docket No. 19-1087 (issued October 17, 2019); *B.V.*, Docket No. 18-1473 (issued April 23, 2019).

⁷ *T.C.*, *id.*; *K.L.*, Docket No. 19-0480 (issued August 23, 2019).

⁸ *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *M.G.*, Docket No. 17-1831 (issued February 6, 2018); *Eddie Franklin*, 51 ECAB 223 (1999).

ANALYSIS

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

OWCP's regulations provide that a request for review of the written record must be made within 30 days of the date of the decision for which a review is sought. Because appellant's August 25, 2019 request for review of the written record was postmarked August 26, 2019, it post-dated OWCP's July 2, 2019 decision by more than 30 days and was therefore untimely. As such, she was not entitled to review of the written record as a matter of right.⁹

OWCP also has the discretionary power to grant an oral hearing or review of the written record even if the claimant is not entitled to a review as a matter of right. The Board finds that OWCP, in its September 19, 2019 decision, properly exercised its discretion noting that it had considered the matter in relation to the issue of recurrence and determined that the issue could be equally well addressed through a request for reconsideration before OWCP, along with the submission of additional medical evidence.

The Board has held that as the only limitation on OWCP's authority is reasonableness. 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.¹⁰ Herein, the evidence of record does not establish that OWCP abused its discretion in denying appellant's request for a review of the written record. Accordingly, the Board finds that OWCP properly denied appellant's request for a review of the written record.

CONCLUSION

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

⁹ *D.S.*, Docket No. 19-1764 (issued March 13, 2020).

¹⁰ *See T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2020
Washington, DC

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

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board