

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

R.C., Appellant	)	
	)	
and	)	<b>Docket No. 19-0949</b>
	)	<b>Issued: June 24, 2020</b>
<b>DEPARTMENT OF THE INTERIOR, BUREAU</b>	)	
<b>OF RECLAMATION, Folsom, CA, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 1, 2019 appellant filed a timely appeal from an October 24, 2018 merit decision and a February 6, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b) as untimely filed; and (2) whether appellant met his burden of proof

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the October 24, 2018 decision, OWCP received additional evidence. 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.*

to establish that his chronic headache condition was caused or aggravated by the accepted factors of his federal employment.

### **FACTUAL HISTORY**

On August 14, 2018 appellant, then a 48-year-old building repair worker, filed an occupational disease claim (Form CA-2) alleging that his chronic headaches were caused by factors of his federal employment, including unhealthy air due to wild fires and exposure to smoke. In support of his claim, he submitted a written statement and medical evidence. The employing establishment submitted a statement and further documentation regarding appellant's work assignments, his headache condition, and his leave history.

By decision dated October 24, 2018, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that his employment duties caused or aggravated a preexisting condition and.

On a request form dated November 15, 2018, and received by OWCP on November 28, 2018 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated February 6, 2019, OWCP's Branch of Hearings and Review denied appellant's hearing request. It found that the request was untimely filed as it had a carrier's mark of November 28, 2018, more than 30 days after its October 24, 2018 merit decision. After exercising its discretion, OWCP further found that the issue in the case could equally well be addressed through the reconsideration process.

### **LEGAL PRECEDENT -- ISSUE 1**

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."<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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<sup>3</sup> 5 U.S.C. § 8124(b).

<sup>4</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>5</sup> *Id.* at § 10.616(a).

<sup>6</sup> *See D.R.*, Docket No. 19-1899 (issued April 15, 2020).

OWCP's procedures provide that the request is timely if it was mailed (as determined by the postmark or other carrier's date marking) within 30 days of the date of the district office's decision. If the postmark is not legible, the request will be deemed timely unless OWCP has kept evidence of date of delivery in the record reflecting that the request is untimely.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP improperly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b) as untimely filed.

While OWCP noted in its February 6, 2019 decision that the appeal form had a carrier's mark of November 28, 2018, the envelope or other evidence of the carrier's mark was not retained in the record. As the record lacks evidence of the postmark or other evidence from which the date of the mailing could be established, the hearing request is deemed timely.<sup>8</sup> Upon return of the case record, OWCP shall schedule an appropriate hearing with a representative of OWCP's Branch of Hearings and Review.

### **CONCLUSION**

The Board finds that OWCP improperly denied appellant's request for an oral hearing pursuant to U.S.C. § 8124(b) as untimely filed.<sup>9</sup>

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<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (October 2011).

<sup>8</sup> *Id.*

<sup>9</sup> In light of the disposition of Issue 1, Issue 2 is in an interlocutory posture.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 6, 2019 and October 24, 2018 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: June 24, 2020  
Washington, DC

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

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

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