

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

_____)	
W.F., Appellant)	
)	
and)	Docket No. 19-1822
)	Issued: June 4, 2020
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Norfolk, VA, Employer)	
_____)	

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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On August 23, 2019 appellant filed a timely appeal from a July 11, 2019 nonmerit decision of the Office of Workers' Compensation Programs.¹ As more than 180 has days elapsed from OWCP's last merit decision, dated December 20, 2018, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this claim.³

¹ The Board notes that appellant also sought to appeal from a purported February 27, 2019 decision of OWCP. There is no final adverse merit decision of OWCP of record dated February 27, 2019. The letter from OWCP dated February 27, 2019, stating that appellant's request for authorization could not be approved at that time pending further medical development, constitutes an informational letter. The Board's jurisdiction is limited to reviewing final adverse decisions of OWCP issued under FECA. *See* 20 C.F.R. § 501.3(a).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional evidence to OWCP following the July 11, 2019 decision, and 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 July 11, 2005 appellant, then a 46-year-old transportation security screener, filed a traumatic injury claim (Form CA-1) alleging that on July 10, 2005 she sustained a left knee strain as a result of constantly lifting and stooping to conduct pat-downs on passengers while in the performance of duty. OWCP accepted the claim for left knee sprain, later expanding acceptance of the claim to include the additional condition of a left knee medial meniscus tear. On December 3, 2006 appellant underwent OWCP-approved left knee arthroscopy with medial and lateral partial meniscectomy and chondroplasty of the patella.

On March 8, 2017 appellant filed a notice of recurrence (Form CA-2a) alleging a recurrence of disability and the need for medical care commencing March 3, 2017.

In a development letter dated April 3, 2017, OWCP informed appellant that she had not submitted sufficient medical evidence to establish a recurrence of disability or the need for medical care. It requested that she submit a comprehensive narrative medical report from her treating physician, including the physician's opinion as to the relationship between her claimed recurrence and her accepted employment injury. OWCP afforded appellant 30 days to submit additional evidence.

Appellant subsequently submitted additional medical evidence in support of her claimed recurrence.

By decision dated December 20, 2018, OWCP denied appellant's recurrence claim finding that she had not submitted sufficient medical evidence to establish that her work stoppage resulted from a worsening of the accepted work injuries without intervening cause.

In an appeal request form dated June 10, 2019, postmarked June 17, 2019, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated July 11, 2019, OWCP's hearing representative denied appellant's request for a review of the written record finding that the request was untimely filed. The hearing representative informed appellant that her case had been considered in relation to the issues involved, and that the issues could be equally 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.⁴

A hearing is a review by an OWCP hearing representative of a final adverse decision issued by an OWCP district office.⁵ 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.⁶ 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.⁷ 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.⁸

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.⁹

ANALYSIS

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

Appellant had 30 days following OWCP's December 20, 2018 merit decision to request a review of the written record before a representative of OWCP's Branch of Hearings and Review. As her request for a review of the written record was postmarked June 17, 2019, more than 30 days after OWCP's December 20, 2018 decision, it was untimely filed and she was, therefore, not entitled to a review of the written record as a matter of right.¹⁰ Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.¹¹

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. § 10.616.

⁶ *Id.* at § 10.615.

⁷ *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).

⁸ *T.C.*, *id.*; *K.L.*, Docket No. 19-0480 (issued August 23, 2019).

⁹ *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).

¹⁰ Under OWCP's regulations and procedures, the timeliness of a request for a hearing is determined on the basis of the postmark of the envelope containing the request. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011); *see also G.S.*, Docket No. 18-0388 (issued July 19, 2018).

¹¹ 5 U.S.C. § 8124(b)(1); *see M.K.*, Docket No. 19-0428 (issued July 15, 2019); *R.H.*, Docket No. 18-1602 (issued February 22, 2019); *William F. Osborne*, 46 ECAB 198 (1994).

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 July 11, 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 reconsideration application. The Board has held that as the only limitation on OWCP's authority is reasonableness, 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.¹² The Board finds that the evidence of record does not indicate that OWCP abused its discretion in connection with its denial of 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 by an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the July 11, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹² See *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214 (1990).