

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

J.F., Appellant

and

**U.S. POSTAL SERVICE, TRACY POST
OFFICE, Tracy, CA, Employer**

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**Docket No. 21-0452
Issued: October 4, 2021**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 6, 2021 appellant filed a timely appeal from an October 13, 2020 merit decision and a December 22, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issues are: (1) whether OWCP properly denied appellant's request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124(b); and (2) whether appellant has met his burden of proof to establish a medical condition causally related to the accepted August 10, 2020 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 17, 2020 appellant, then a 45-year-old postal collect and delivery employee, filed a traumatic injury claim (Form CA-1), alleging that on August 10, 2020 he injured his right knee and shin, as well as his left forearm, when he missed a step and fell while delivering mail in the performance of duty.. He stopped work on August 10, 2020. On the reverse side of the claim form appellant's supervisor acknowledged that he was injured in the performance of duty.

OWCP received a partially illegible report dated August 11, 2020 and a report dated August 18, 2020 from Dr. Khin Thingyan Chit, an internist. Dr. Chit diagnosed right elbow contusion. She also provided appellant with work restrictions.

In a development letter dated September 8, 2020, OWCP advised appellant of the type of factual and medical evidence needed and provided a questionnaire for his completion. It afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a radiology report dated August 11, 2020 from Dr. Ravi Venkat Gangula, a Board-certified diagnostic radiology specialist. Dr. Gangula diagnosed right elbow contusion and mild degenerative disc disease of the right knee.

In a work status report dated September 1, 2020, Dr. Chit diagnosed right knee contusion and right lower leg contusion.

By decision dated October 13, 2020, OWCP accepted that the August 10, 2020 employment incident occurred, as alleged, but denied appellant's claim as causal relationship was not established between a diagnosed medical condition and the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On November 25, 2020 the Branch of Hearings and Review scanned an undated hearing request into the record. An envelope addressed to the Branch of Hearings and Review was also scanned into the record on the same date. The envelope did not bear a postmark date, nor was it stamped as received by the Branch of Hearings and Review.

By decision dated December 22, 2020, OWCP's Branch of Hearings and Review denied appellant's hearing request. It found that the request was untimely filed, as it was not received until November 25, 2020, more than 30 days after its October 13, 2020 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 of 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.²

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.³ 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.⁴ 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.⁵

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 and must properly exercise such discretion.⁶

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.⁷

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 December 22, 2020 decision that the appeal form was not received until November 25, 2020, there is no postmark and there is no evidence retained in the record of the actual delivery date to establish that the request was untimely. As the record lacks evidence of the postmark or other evidence from which the date of the mailing could be established, the Board finds that the hearing request is deemed timely.⁸ Upon return of the case

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.615.

⁴ *Id.* at § 10.616(a); *B.V.*, Docket No. 18-1473 (issued April 23, 2019).

⁵ *K.L.*, Docket No. 19-0480 (issued August 23, 2019).

⁶ *Supra* note 3 at § 10.616(b); *see also F.M.*, Docket No. 18-0161 (issued May 18, 2018).

⁷ *R.C.*, Docket No. 19-0949 (issued June 24, 2020); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (October 2011).

⁸ *R.C.*, *id.*

record, OWCP shall schedule a hearing before a representative of OWCP's Branch of Hearings and Review.⁹

CONCLUSION

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.

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2020 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 4, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

⁹ In light of the Board's disposition of Issue 1, Issue 2 is in an interlocutory posture. See section 501.2(c)(2) of the Board's *Rules of Procedure* which provides: "There will be no appeal with respect to any interlocutory matter decided (or not decided) by OWCP during the pendency of a case." 20 C.F.R. § 501/2(c)(2).