United States Department of Labor
Employees' Compensation Appeals Board

L.M., EXECUTRIX OF THE ESTATE OF W.M., Appellant	)	
and	)	**Docket No. 21-1371** **Issued: October 26, 2021**
DEPARTMENT OF THE ARMY, ARMY DEPOT, Corpus Christi, TX, Employer	)	

Appearances:
Steve Maher, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER DISMISSING APPEAL

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

On September 6, 2021 appellant, through her representative, filed an appeal from a January 22, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-1371.

The Board has duly considered the matter and notes that the Board has jurisdiction to review final adverse decisions of OWCP issued under the Federal Employees' Compensation Act.[2] For final adverse decisions of OWCP issued on or after November 19, 2008, the Board's review authority is limited to appeals which are filed within 180 days from the date of issuance of OWCP's decision.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8149; 20 C.F.R. §§ 501.2(c) and 501.3(a) (2009).

[3] *Id.* at § 501.3(e).

The 180th day following the January 22, 2021 decision was July 21, 2021. As appellant did not file an appeal with the Board until September 6, 2021, more than 180 days after the January 22, 2021 OWCP decision, the Board finds that the appeal docketed as No. 21-1371 is untimely filed. The Board is without jurisdiction to review the appeal.

On appeal, appellant's representative requests that the 180-day time limit for filing an appeal be extended as he "had to be extra careful" due to his mother's age during the COVID-19 pandemic. Pursuant to the Board's *Rules of Procedure*, "The Board maintains discretion to extend the time period for filing an appeal if an applicant demonstrates compelling circumstances. Compelling circumstances means circumstances beyond the Appellant's control that prevent the timely filing of an appeal and does not include any delay caused by the failure of an individual to exercise due diligence in submitting a notice of appeal."[4] Appellant's representative only generally asserted that the COVID-19 pandemic was a complicating factor that prevented the timely filing of the appeal. He has not submitted evidence or argument sufficient to establish the inability to file a timely appeal.[5] For this reason, the Board finds that this argument is insufficient to establish compelling circumstances as contemplated by the Board's implementing regulation.[6] Therefore, the appeal will be dismissed.

The Board's decisions and orders are "final upon the expiration of 30 days from the date of their issuance."[7]

[4] *Id*.

[5] The Board notes that OWCP's January 21, 2021 decision specifically advised appellant that an ECAB appeal may be filed electronically through ECAB's electronic filing system (EFS). *See* 20 C.F.R. § 501.3(f).

[6] *Supra* note 3. *See also S.S.* Docket No. 10-1135 (issued June 23, 2010).

[7] *Id*. at § 501.6(d).

IT IS HEREBY ORDERED THAT the appeal docketed as No. 21-1371 is dismissed.

Issued: October 26, 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