

ISSUE

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

FACTUAL HISTORY

On January 18, 2021 appellant, then a 38-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on January 16, 2021 he injured his left knee when he was involved in an altercation with a resistant subject he was arresting while in the performance of duty. He stopped work on January 16, 2021 and returned to modified-duty work on January 19, 2021, and full-duty work on January 21, 2021.

In a form report dated January 17, 2021, Dr. Russell Grant, an internal medicine specialist, noted that appellant related complaints of left knee pain and right hand pain after an altercation the previous night. He performed a physical examination, which revealed tenderness to palpation across the dorsum of the right hand in the middle third through fifth metacarpals, pain with range of motion in the left knee, and two abraded areas on the left knee, which were clean and dry without swelling, bruising, discharge, or bleeding. Dr. Grant diagnosed unspecified injuries to the right hand and left knee and recommended modified-duty work restrictions.

On January 17, 2021 Ellen Kelley, a nurse practitioner, diagnosed right hand sprain and left knee pain. She recommended that appellant utilize crutches until his next evaluation and released him to return to work with restrictions from January 17 through 20, 2021.

In a form report dated January 18, 2021, Dr. Mark Bickley, an osteopath and family medicine specialist diagnosed unspecified injuries of the right wrist and lower leg. He released appellant to modified-duty work for the period January 18 through 21, 2021.

OWCP, in a January 28, 2021 development letter, informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and afforded him 30 days to respond.

OWCP thereafter received a progress report from Dr. Bickley dated January 18, 2021, who indicated that appellant related ongoing pain in the right hand and left knee. Dr. Bickley noted that x-rays of the right hand and left knee had revealed no fractures. He performed a physical examination and recommended ongoing modified-duty work restrictions.

In a medical form report dated January 21, 2021, Dr. Bickley opined that appellant's conditions had resolved and required no further treatment. He released him to return to full-duty work.

By decision dated March 5, 2021, OWCP accepted that the January 16, 2021 incident occurred, as described. However, it denied appellant's traumatic injury claim, finding that he had not submitted any medical evidence from a qualified physician containing a medical diagnosis in connection with the accepted employment incident. Therefore, OWCP concluded that the requirements had not been met to establish an injury under FECA.

OWCP continued to receive medical evidence, including reports of x-rays of the right hand and left knee dated January 17, 2021, which were read as normal.

In a June 14, 2021 letter, Dr. Charity P. Russell, a Board-certified occupational medicine specialist, noted that appellant reported abrasions to his left knee and discomfort on the dorsum of his right hand, which he attributed to an altercation while making an arrest at work on January 16, 2021. She diagnosed sprains of the right wrist and left knee.

On July 23, 2021 OWCP received additional copies of previously submitted medical records and an undated letter from appellant.

On September 10, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated October 7, 2021, OWCP denied appellant's request for a review of the written record, finding that the request was untimely filed.

LEGAL PRECEDENT

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."³ 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.⁴ 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.⁵ 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.⁶

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.

OWCP's regulations provide that the request for a hearing or 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 request for a review of the written record was dated September 10, 2021, it postdated

³ *Supra* note 1 at § 8124(b)(1).

⁴ 20 C.F.R. §§ 10.616, 10.617.

⁵ *Id.* at § 10.616(a).

⁶ *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *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); *Delmont L. Thompson*, 51 ECAB 155 (1999).

OWCP's March 5, 2021 decision by more than 30 days and, accordingly, is untimely. Appellant was, therefore, not entitled to a review of the written record as a matter of right.⁷

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.⁸ The Board finds that, in the March 5, 2021 decision, OWCP properly exercised its discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration, along with the submission of additional evidence.

The Board has held that 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 deductions from established facts.⁹ 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 as untimely filed, pursuant to 5 U.S.C. § 8124(b).

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).

⁷ See *M.F.*, Docket No. 21-0878 (issued January 6, 2022); see also *P.C.*, Docket No. 19-1003 (issued December 4, 2019).

⁸ *Id.*

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board