

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

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Y.D., Appellant)		
and)		
U.S. POSTAL SERVICE, EVANSTON POST)		Docket No. 22-0439
OFFICE, Evanston, WY, Employer)		Issued: August 12, 2022
_____)		

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

Case Submitted on the Record

ORDER DISMISSING APPEAL

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

On January 31, 2022 appellant filed an appeal from a March 26, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as 22-0439.

The Board having duly considered the matter and concludes that the appeal docketed as Docket No. 22-0439 must be dismissed. The Board notes that it has jurisdiction to review final adverse decisions of OWCP issued under the Federal Employees' Compensation Act.¹ 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.²

The 180th day following the March 26, 2020 decision was September 22, 2020. As appellant did not file an appeal with the Board until January 31, 2022, more than 180 days after

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

² *Id.* at § 501.3(e).

the March 26, 2020 OWCP decision, the Board finds that the appeal docketed as Docket No. 22-0439 is untimely filed. The Board is without jurisdiction to review the appeal.

On appeal, appellant argues that her failure to file a timely appeal was due to a new bilateral foot and ankle injury she sustained on March 5, 2020. She explained that she had been off work since December 15, 2020 and she was in desperate need of medical treatment which would enable a clear diagnosis of her condition. Pursuant to the Board's *Rules of Procedure*, "The Board maintains discretion to extend the time period for filing an appeal if an appellant demonstrates compelling circumstances. Compelling circumstances means circumstances beyond 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."³ Appellant has not submitted evidence or argument sufficient to establish the inability to file a timely appeal.⁴ For this reason, the Board finds that this argument is insufficient to establish compelling circumstances as contemplated by the Board's implementing regulations.⁵ Therefore, the appeal assigned Docket No. 22-0439, will be dismissed.

The Board's decisions and orders are "final upon the expiration of 30 days from the date of their issuance."⁶

³ *Id.*

⁴ The Board notes that OWCP's March 26, 2020 decision specifically advised a ppellant that an ECAB appeal may be filed electronically through ECAB's electronic filing system. *See* 20 C.F.R. § 501.3(f).

⁵ *Supra* note 2; *see also Order Dismissing Appeal, A.T.*, Docket No. 22-0168 (issued December 1, 2021); *Order Dismissing Appeal, L.M.*, Docket No. 21-1371 (issued October 26, 2021); *Order Dismissing Appeal, S.S.* Docket No. 10-1135 (issued June 23, 2010).

⁶ *Id.* at § 501.6(d).

IT IS HEREBY ORDERED THAT the appeal assigned Docket No. 22-0439 is dismissed.

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board