

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

K.N., Appellant	)	
	)	
and	)	
	)	
DEPARTMENT OF THE ARMY, TRAINING & DOCTRINE COMMAND, Fort Leonard Wood, MO, Employer	)	Docket No. 22-0647 Issued: August 29, 2022
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On February 28, 2022 appellant filed a timely appeal from an October 25, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated May 28, 2021, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On April 8, 2021 appellant, then a 63-year-old equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on April 1, 2021 he injured his left knee when he missed the last step getting out of a bucket loader and fell to the ground while in the performance of duty. He did not stop work.

In support of his claim appellant submitted an April 5, 2021 disability note from Marie Gatzemeyer, a Board-certified family nurse practitioner, who diagnosed a left knee hyperextension injury. She also noted work restrictions.

In a development letter dated April 20, 2021, OWCP informed appellant of the deficiencies of his claim and advised him of the type of factual and medical evidence needed to establish his claim. It asked him to complete a questionnaire to provide further details regarding the circumstances of the claimed April 1, 2021 employment incident, including the immediate effects of the injury and a detailed description as to how his injury occurred. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received an April 9, 2021 magnetic resonance imaging (MRI) scan of appellant's left knee which demonstrated findings of supratellar joint effusion.

In progress notes dated May 17, 2021, Dr. Jeff Mutcheler, an osteopath Board-certified in orthopedic surgery, noted that appellant had twisted his knee on April 1, 2021. He related appellant's diagnosis as complex tear of the left knee medial meniscus and chondromalacia of the patellofemoral joint. Dr. Mutcheler recommended that appellant undergo arthroscopy for partial medial meniscectomy and chondroplasty shaving.

By decision dated May 28, 2021, OWCP denied appellant's claim finding the evidence insufficient to establish that the incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 23, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated October 25, 2021, OWCP denied appellant's September 23, 2021 request for an oral hearing as untimely filed as it was not made within 30 days of OWCP's May 28, 2021 decision. As the request was untimely filed, it concluded that he was not entitled to a hearing as a matter of right. OWCP considered a discretionary hearing, but declined to grant a hearing, noting that appellant could instead file for reconsideration before OWCP's district office and submit evidence in support of his traumatic injury claim not previously considered.

## **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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

### ANALYSIS

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

On September 23, 2021, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review; however, this request was made more than 30 days after OWCP's May 28, 2021 decision.<sup>6</sup> Section 8124(b)(1) is unequivocal on the time limitation for filing a request for a hearing.<sup>7</sup> As such, the request was untimely filed and appellant was not entitled to an oral hearing as a matter of right.

The Board further finds that OWCP in its October 25, 2021 decision, properly exercised its discretionary authority, explaining that it had considered the matter and denied appellant's request for an oral hearing as his claim could be equally well addressed through a reconsideration request.

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 deduction

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<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> 20 C.F.R. §§ 10.616, 10.617, and 10.618.

<sup>4</sup> *Id.* at § 10.616(a).

<sup>5</sup> *G.H.*, Docket No. 22-0122 (issued May 20, 2022); *E.E.*, Docket No. 20-1290 (issued July 21, 2021); *J.T.*, Docket No. 18-0664 (issued August 12, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>6</sup> 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 2.1601.4a (September 2020). If the postmark is illegible, the request will be deemed timely unless OWCP has kept evidence of date of delivery on the record reflecting that the request is untimely. *Id.*

<sup>7</sup> See *G.H.*, *supra* note 5; *M.M.*, Docket No. 19-1171 (issued October 22, 2019); *William F. Osborne*, 46 ECAB 198 (1994).

from established facts.<sup>8</sup> The Board finds that the evidence of record does not establish that OWCP abused its discretion in denying appellant's request for an oral hearing before an OWCP hearing representative.<sup>9</sup>

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 25, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 29, 2022  
Washington, DC

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

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

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

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<sup>8</sup> *T.G.*, Docket No. 19-0904 (issued November 25, 2019); see *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>9</sup> *G.H.*, *supra* note 5; *J.G.*, Docket No. 19-0555 (issued March 14, 2019).