

ISSUES

The issues are: (1) 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); and (2) whether appellant has met her burden of proof to establish an injury in the performance of duty on June 8, 2021.

FACTUAL HISTORY

On July 1, 2021 appellant, then a 48-year-old air traffic controller, filed a traumatic injury claim (Form CA-1) alleging that on June 8, 2021 she suffered a heart attack in the performance of duty, as she worked a busy session for approximately one hour. On the reverse side of the claim form appellant's supervisor, A.F. acknowledged that appellant was injured in the performance of duty. Appellant stopped work on June 8, 2021.

In a development letter dated July 20, 2021, OWCP advised appellant that additional evidence was necessary to establish her claim. It noted the type of factual and medical evidence needed and provided her with a questionnaire. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP memorandum of telephone call (Form CA-110) notes dated August 11, 2021 indicate that appellant called OWCP on that date and requested additional time to submit evidence. Appellant was advised that she had until August 27, 2021 to respond to the development letter. No further evidence was received.

By decision dated August 27, 2021, OWCP denied appellant's claim, finding that the evidence of record was 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.

OWCP thereafter received a letter dated August 10, 2021 from appellant's coworker, which attested that on the day of appellant's alleged injury, appellant was very busy. The coworker indicated that appellant did not feel well, had pain in her chest, and that her arm was hurting. He believed that appellant had a heart attack, and that stress brought on by never seen before air traffic levels was a factor.

In a letter dated August 23, 2021, another supervisor, M.R., related that on June 8, 2021 appellant told her that she was not feeling well and requested an aspirin. M.R. also noted that appellant was taken to the fire station due to her symptoms.

In a report dated August 17, 2021, Dr. Jorge Trejo Gutierrez, a Board-certified internal medicine specialist, related that on June 8, 2021 appellant reported chest pressure while at work. She was later transported to the hospital and was found to have sustained a "non-ST segment elevation myocardial infarction." Appellant underwent cardiac catheterization, and a stent was placed. Dr. Gutierrez related that "air traffic controller ranks as one of the highest professions to experience stress and high stress can lead to heart disease and myocardial infarction."

On September 27 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.³

In response to OWCP's development questionnaire, appellant responded that on the date of the alleged incident she felt fine prior to work. She fell ill during her shift and took two aspirin. Twenty minutes later, appellant requested to be relieved in order to seek medical attention. She related that she believed that the increased air traffic she was monitoring that day and limited staffing caused her to suffer a heart attack. Appellant stated that she had not previously experienced heart issues.

By decision dated October 19, 2021, OWCP's Branch of Hearings and Review denied appellant's request for a review of the written record, finding that it was untimely. It further exercised its discretion and determined that the issue in this case could be equally well addressed by requesting reconsideration by OWCP, along with the submission of new evidence.

LEGAL PRECEDENT – ISSUE 1

Section 8124(b)(1) of FECA provides: “Before review under section 8128(a) of this title [relating to reconsideration], a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section 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.”⁴

Section 10.615 of Title 20 of the Code of Federal Regulations provides, “A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats, an oral hearing or a review of the written record.”⁵ The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.⁶ OWCP has discretion, however, to grant or deny a

³ A packet of documents was received by OWCP on September 29, 2021, including appellant's undated request for review of the written record. There was no envelope containing a postmark found in the case record. The cover letter was dated September 27, 2021.

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. § 10.615.

⁶ *Id.* at § 10.616.

request that is made after this 30-day period.⁷ In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly 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 a request for review of the written record must be made within 30 days of the date of the decision for which a review is sought.⁹

Under OWCP's regulations and procedures, the timeliness of a request for a review of the written record is determined on the basis of the postmark of the envelope containing the request. If the postmark is not legible, the request will be deemed timely unless OWCP has kept evidence of date of delivery on the record reflecting that the request is untimely.¹⁰ Otherwise, the date of the letter itself should be used.¹¹

OWCP found that appellant's request for a review of the written record was untimely filed as it was filed more than 30 days after the issuance of OWCP's August 27, 2021 merit decision. The Board finds, however, that OWCP did not retain any postmark or other marking evidencing the date of delivery. Appellant's submission containing the request for a review of the written record was dated September 27, 2021. As this was within 30 days of the August 27, 2021 decision, the request was, therefore, timely filed. Accordingly, the Board finds that OWCP improperly denied appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).¹²

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

⁷ *G.W.*, Docket No. 10-0782 (issued April 23, 2010).

⁸ *Id.*

⁹ *Supra* note 5.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (September 2020). *See T.B.*, Docket No. 20-0158 (issued March 18, 2022).

¹¹ *See M.J.*, Docket No. 21-0889 (issued May 18, 2022); *K.B.*, Docket No. 21-1038 (issued February 28, 2022); *see J.H.*, Docket No. 06-1565 (issued February 20, 2007); *James B. Moses*, 52 ECAB 465 (2001) *citing William J. Kapfhammer*, 42 ECAB 271 (1990); *see also Douglas McLean*, 42 ECAB 759 (1991).

¹² In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2021 decision of the Office of Workers' Compensation Programs is reversed. The October 19, 2021 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: July 7, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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