

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

K.A., Appellant)	
)	
and)	Docket No. 23-0519
)	Issued: December 8, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Rock Island, IL, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 5, 2023 appellant filed a timely appeal from an October 24, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated April 18, 2022, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3 the Board lacks jurisdiction to review the merits of this case.

ISSUE

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

FACTUAL HISTORY

On March 1, 2022 appellant, then a 38-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 7, 2022 he twisted his left ankle and fell to his knee while

¹ 5 U.S.C. § 8101 *et seq.*

in the performance of duty. He stopped work on January 7, 2022 and returned to work on January 8, 2022. Appellant submitted no evidence in support of his claim.

In a development letter dated March 8, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit additional evidence.

Thereafter, appellant submitted a treatment note from Dr. Camilla J. Frederick, a family practitioner, dated February 18, 2022 recounting his history of injury on January 7, 2022 and diagnosing left ankle sprain causally related to work activities.²

By decision dated April 18, 2022, OWCP denied appellant's claim. It found that the January 7, 2022 employment incident occurred as alleged, but that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted employment incident.

Appellant continued to provide evidence. In an appeal request form dated September 7, 2022, he requested a review of the written record by a hearing representative of OWCP's Branch of Hearings and Review.

By decision dated October 24, 2022, OWCP's Branch of Hearings and Review denied appellant's request for a review of the written record, finding that it was untimely filed. It further exercised its discretion and determined that the issue in the case could equally well be addressed by a request for reconsideration before OWCP along with the submission of new evidence supporting that he had a medical condition causally related to his accepted employment incident.

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

² Appellant also submitted evidence from other healthcare providers including nurses, physical therapists, and physician assistants. Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also R.S.*, Docket No. 21-0803 (issued February 23, 2023) (nurse practitioners and physical therapists are not considered physicians under FECA); *see also L.E.*, Docket No. 22-1061 (issued January 23, 2023) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *see also H.A.*, Docket No. 20-1267 (issued January 20, 2023) (registered nurses are not considered physicians as defined under FECA).

³ 5 U.S.C. § 8124(b).

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(b).

In an appeal request form dated September 7, 2022, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review; however, this request was made more than 30 days after OWCP's April 18, 2022 decision. Section 8124(b)(1) is unequivocal on the time limitation for filing a request for a review of the written record.⁷ As such, the request was untimely filed, and appellant was not entitled to a review of the written record as a matter of right.⁸

The Board further finds that OWCP, in its October 24, 2022 decision, properly exercised its discretionary authority, explaining that it had considered the matter and denied appellant's request for a review of the written record 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 deductions from established facts.⁹ In this case, the evidence of record does not indicate that OWCP abused its discretion by denying appellant's request for a review of the written record.¹⁰ Accordingly, the Board finds that OWCP properly denied his request for a review of the written record pursuant to 5 U.S.C. § 8124(b) as untimely filed.

⁴ 20 C.F.R. §§ 10.616, 10.617.

⁵ *Id.* at § 10.616(a).

⁶ *V.S.*, Docket No. 22-1325 (issued December 16, 2022); *M.F.*, Docket No. 21-0878 (issued January 6, 2022); *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁷ *See supra* note 2; *K.N.*, Docket No. 22-0647; *G.H.*, Docket No. 22-0122 (issued May 20, 2022).

⁸ *See D.R.*, Docket No. 22-0361 (issued July 8, 2022); *D.S.*, Docket No. 21-1296 (issued March 23, 2022); *P.C.*, Docket No. 19-1003 (issued December 4, 2019).

⁹ *See S.I.*, Docket No. 22-0538 (issued October 3, 2022); *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214 (1990).

¹⁰ *See M.A.*, Docket No. 22-0850 (issued November 8, 2022).

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).

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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