

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

E.L., Appellant)	
)	
and)	Docket No. 23-0049
)	Issued: November 21, 2023
DEPARTMENT OF AGRICULTURE, U.S.)	
FOREST SERVICE, Corona, CA, Employer)	
)	

Appearances:

Stephanie N. Leet, Esq., for the appellant¹
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 October 17, 2022 appellant, through counsel, filed a timely appeal from a September 28, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² The record also contains an August 18, 2022 decision which is not before the Board at this time.

³ 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are set forth below.

On August 12, 2019 appellant, then a 31-year-old firefighter technician, filed a traumatic injury claim (Form CA-1) alleging that on August 10, 2019 he experienced sharp, unbearable chest pain which radiated into his left arm and back, followed by dizziness, after he had hiked to his assigned location and began working with a smoldering piece of duff while in the performance of duty. He stopped work on August 10, 2019.

By decision dated November 21, 2019, OWCP accepted that the August 10, 2019 employment incident occurred as alleged but denied the claim as the medical evidence of record did not contain a medical diagnosis in connection with the accepted employment incident. Consequently, it found that the requirements had not been met to establish an injury as defined by FECA.

On December 3, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated February 4, 2020, OWCP's hearing representative affirmed the November 21, 2019 decision.

On January 11, 2021 appellant, through counsel, requested reconsideration and submitted additional evidence.

By decision dated February 12, 2021, OWCP denied modification of its February 4, 2020 decision.

On March 5, 2021 appellant, through counsel, appealed to the Board. By decision dated July 6, 2022,⁵ the Board found that the case was not in posture for decision. The Board found that appellant had in fact established a diagnosed medical condition. Accordingly, the Board set aside OWCP's February 12, 2021 decision and remanded the case to OWCP to review the medical evidence of record with regard to causal relationship and, following any further development deemed necessary, issue a *de novo* decision.

By decision dated August 18, 2022, OWCP issued a "*de novo* decision" modifying its February 4, 2020 decision to reflect that appellant had established fact of injury but denying the

⁴ Docket No. 21-0587 (issued July 6, 2022).

⁵ *Id.*

claim as the evidence was insufficient to establish causal relationship between a diagnosed medical condition and the accepted August 10, 2019 employment incident. The appeal rights attached to the decision indicated that appellant could request either reconsideration before OWCP or review by the Board.

On September 14, 2022 appellant, through counsel, requested review of the written record by a representative of OWCP's Branch of Hearings and Review for the August 18, 2022 decision.

By decision dated September 28, 2022, OWCP denied appellant's request for a review of the written record by a representative of OWCP's Branch of Hearings and Review. It found that he was not entitled to a review as a matter of right as he had previously received a decision by the Branch of Hearings and Review on February 4, 2020. OWCP exercised its discretion and performed a limited review of the evidence submitted following reconsideration, and further denied the request as the issue in the case would be addressed equally well by appellant submitting new, relevant evidence or argument with a valid request for reconsideration.

LEGAL PRECEDENT

A claimant dissatisfied with an OWCP decision shall be afforded an opportunity for either an oral hearing or a review of the written record.⁶ Section 8124(b) of FECA, concerning a claimant's entitlement to a hearing, states that: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his or her claim before a representative of the Secretary."⁷ OWCP's regulations further explain that the claimant must have not previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁸ Although a claimant who has previously sought reconsideration is not, as a matter of right, entitled to a hearing or review of the written record, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing following reconsideration.⁹

ANALYSIS

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

OWCP denied appellant's September 14, 2022 request for review of the written record, finding that he was not entitled to a review as a matter of right because he had previously received a decision by the Branch of Hearings and Review on February 4, 2020. While it is true that a representative of OWCP's Branch of Hearings and Review issued a decision on February 4, 2020,

⁶ 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.615.

⁷ *Id.* at § 8124(b)(1).

⁸ *Id.*

⁹ See *H.T.*, Docket No. 20-1318 (issued April 27, 2021); *E.S.*, Docket No. 19-1144 (issued August 3, 2020); *J.C.*, Docket No. 19-1293 (issued December 16, 2019); *T.M.*, Docket No. 18-1418 (issued February 7, 2019); *M.W.*, Docket No. 16-1560 (issued May 8, 2017); *D.E.*, 59 ECAB 438 (2008); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

the decision pertained to OWCP's November 21, 2019 decision.¹⁰ By decision dated July 6, 2022, the Board remanded the case for a *de novo* decision. OWCP, on August 18, 2022, issued a *de novo* decision with respect to appellant's August 10, 2019 traumatic injury claim. It failed to specify in the accompanying appeal rights that he could request a hearing. However, as OWCP had issued a *de novo* decision, appellant could request a hearing as a matter of right pursuant to Section 8124(b) of FECA, so long as his request was made within 30 days after the date of issuance of the decision.¹¹

Appellant's request for review of the written record was received by OWCP on September 14, 2022, which was within 30 days of the August 18, 2022 decision.¹² Accordingly, OWCP improperly denied appellant's request for a request for review of the written record. The Board, therefore, finds that OWCP improperly denied appellant's September 14, 2022 request for a review of the written record, pursuant to 5 U.S.C. § 8124(b). Upon return of the case record, OWCP shall proceed with a review of the written record by a representative of OWCP's Branch of Hearings and Review, as requested.¹³

CONCLUSION

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

¹⁰ *Supra* note 4.

¹¹ *Supra* note 7.

¹² *Id.*

¹³ *Order Reversing Case, P.B.*, Docket No. 21-0723 (issued April 13, 2022); *Order Reversing Case, L.A.*, Docket No. 21-0048 (issued July 19, 2021).

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2022 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 21, 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