

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

_____	)	
<b>J.J., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-0647</b>
	)	<b>Issued: September 12, 2023</b>
<b>DEPARTMENT OF VETERANS AFFAIRS, VA</b>	)	
<b>MEDICAL CENTER, Loma Linda, CA,</b>	)	
<b>Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On March 31, 2023 appellant filed a timely appeal from a March 20, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> As more than 180 days has elapsed from the last merit decision dated April 10, 2019, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>3</sup>

---

<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because the Board does not have jurisdiction over the merits of this case and, thus, the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the issuance of the April 10, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is 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).

## FACTUAL HISTORY

This case has previously been before the Board on another issue.<sup>4</sup> The facts and circumstances of the case as set forth in the prior Board decisions and orders are incorporated herein by reference. The relevant facts are as follows.

On August 19, 2002 appellant, then a 54-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she injured her right wrist, lower arm, and buttock on that date when she slipped and fell while in the performance of duty. OWCP accepted the claim for contusion of the back, lumbosacral strain, displacement of the lumbar intervertebral disc without myelopathy, enthesopathy of the hip region, thoracic or lumbosacral neuritis or radiculitis, and spondylolisthesis. It authorized lumbar surgery, which was performed on May 17, 2004; and L4-S1 spinal fusion, and L5 laminectomy with bilateral fasciectomy and right iliac crest bone graft, which was performed on August 3, 2004. OWCP paid appellant on the supplemental rolls from April 29 through May 15 2004, on the periodic rolls from May 16, 2004 through July 8, 2006, and on the supplemental rolls from July 9 to 26, 2006.<sup>5</sup>

By decision dated April 10, 2019, OWCP granted appellant a schedule award for 31 percent right upper extremity permanent impairment and 30 percent permanent impairment of the left lower extremity. The period of the award ran for 175.68 weeks from December 13, 2018 through April 25, 2022.

OWCP continued to receive medical evidence.

In an appeal request form dated February 20, 2023, and postmarked February 23, 2023, appellant requested review of the written record by a representative of OWCP's Branch of Hearings and Review of the April 10, 2019 decision.

By decision dated March 20, 2023, OWCP denied appellant's request for a review of the written record, finding that the request was untimely filed. It further exercised its discretion and found that the issue could equally well be addressed by requesting reconsideration and submitted additional evidence not previously considered.

---

<sup>4</sup> *Order Dismissing Appeal*, Docket No. 14-1001 (issued June 3, 2014); Docket No. 09-975 (issued April 9, 2010), *petition for recon. denied*, Docket No. 09-975 (issued September 24, 2010); Docket No. 07-143 (issued May 8, 2007).

<sup>5</sup> By decision dated July 26, 2006, OWCP terminated appellant's entitlement to wage-loss and schedule award compensation effective that date as she refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2). In a decision dated May 8, 2007, the Board affirmed the July 26, 2006 decision terminating her wage-loss compensation pursuant to 5 U.S.C. § 8107(c)(2). Docket No. 07-143 (issued May 8, 2007). Following a subsequent appeal from a decision denying modification, the Board affirmed a December 1, 2008 OWCP decision finding that appellant failed to justify her refusal to accept an offer of suitable work. Docket No. 09-975 (issued April 9, 2010), *petition for recon. denied*, Docket No. 09-975 (issued September 24, 2010).

## 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>6</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>7</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>8</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>9</sup>

## 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).

OWCP’s regulations provide that the request for a hearing or review of the written record must be made within 30 days of the date of the decision for which a review is sought. Because appellant’s request for a review of the written record was dated February 20, 2023, and postmarked February 23, 2023, it postdated OWCP’s April 10, 2019 decision by more than 30 days and, accordingly, is untimely. She was, therefore, not entitled to a review of the written record as a matter of right.<sup>10</sup>

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.<sup>11</sup> The Board finds that, in the March 20, 2023 decision, OWCP properly exercised its discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration before OWCP, along with the submission of additional evidence not previously considered.

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.<sup>12</sup> The Board finds that the evidence of record establishes that OWCP did

---

<sup>6</sup> 5 U.S.C. § 8124(b)(1).

<sup>7</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>8</sup> *Id.* at § 10.616(a).

<sup>9</sup> See *W.M.*, Docket No. 22-0521 (issued March 1, 2023); *H.M.*, Docket No. 22-0053 (issued August 12, 2022); *D.S.*, Docket No. 21-1296 (issued March 23, 2022); *J.D.*, Docket No. 15-1679 (issued December 14, 2015); *D.M.*, Docket No. 08-1814 (issued January 16, 2009).

<sup>10</sup> See *H.M.*, *id.*; *M.F.*, Docket No. 21-0878 (issued January 6, 2022); see also *P.C.*, Docket No. 19-1003 (issued December 4, 2019).

<sup>11</sup> *W.M.*, *supra* note 9.

<sup>12</sup> *Id.*

not abuse its discretion in connection with its denial of appellant's request for a review of the written record.

Accordingly, 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).

**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 March 20, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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