

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

C.G., Appellant)

and)

U.S. POSTAL SERVICE, COPPELL POST)
OFFICE, Coppell, TX, Employer)

**Docket No. 25-0053
Issued: December 12, 2024**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On October 21, 2024 appellant filed a timely appeal from a September 5, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days elapsed from the last merit decision on this issue, dated October 18, 2023, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

¹ 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). In support of appellant's oral argument request, she asserted that she had submitted sufficient medical documentation to establish her claim. The Board, in exercising its discretion, denies appellant's request for oral argument because the Board lacks jurisdiction to review the merits of this case, and the nonmerit issues 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.

² 5 U.S.C. § 8101 *et seq.*

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

On July 21, 2023 appellant, then a 58-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained left thumb joint and wrist pain causally related to factors of her federal employment including repetitive holding of mail over the course of 30 years. She noted that she first became aware of her condition on January 6, 2023 and its relationship to her employment on July 21, 2023. Appellant did not stop work.

By decision dated October 18, 2023, OWCP found that the employment factors occurred, but denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment.

By appeal request form received in OWCP's Employees' Compensation and Management Portal (ECOMP) on November 19, 2023, appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. She submitted additional medical evidence in support of her request.

By decision dated September 5, 2024, OWCP denied appellant's request for a review of the written record, finding that the request was untimely filed, pursuant to 5 U.S.C. § 8124(b). 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.

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 representative of the Secretary.⁴ A claimant is entitled to an oral 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, or the date received in ECOMP, and before the claimant has requested reconsideration.⁵ Although there is no right to a review of the written record or an

³ *Supra* note 1 at § 8124(b)(1).

⁴ 20 C.F.R. §§ 10.616, 10.617.

⁵ *Id.* at § 10.616(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024).

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).

OWCP's regulations provide that a request for oral hearing or review of the written record must be made within 30 days of the decision for which review is sought. The 30th day following OWCP's October 18, 2023 decision was Friday, November 17, 2023. As appellant's request for a review of the written record was received in ECOMP on November 19, 2023, the request was made more than 30 days after OWCP's October 18, 2023 decision and was therefore untimely. Section 8124(b)(1) is unequivocal on the time limitation for filing a request for a hearing or review of the written record.⁷ As such, appellant was not entitled to a review of the written record as a matter of right.⁸

OWCP also has the discretionary power to grant an oral hearing or review of the written record even if the claimant is not entitled to a review as a matter of right.⁹ The Board finds that OWCP, in its September 5, 2024 decision, properly exercised its discretion noting that it had determined that the issue could be equally well addressed through a request for reconsideration before OWCP, along with the submission of additional medical evidence.

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 from established facts.¹⁰ Herein, the evidence of record does not establish that OWCP abused its discretion in denying 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).¹¹

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).

⁶ See *P.G.*, Docket No. 24-0447 (issued August 12, 2024); *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁷ See *M.M.*, Docket No. 19-1171 (issued October 22, 2019); *William F. Osborne*, 46 ECAB 198 (1994).

⁸ See *D.S.*, Docket No. 19-1764 (issued March 13, 2020).

⁹ *Supra* note 7.

¹⁰ See *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214 (1990).

¹¹ See *C.H.*, Docket No. 20-0540 (issued December 1, 2020).

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2024
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