

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

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T.P., Appellant)	
)	
and)	Docket No. 23-0886
)	Issued: January 22, 2024
DEPARTMENT OF THE NAVY, MILITARY)	
SEALIFT COMMAND, NAVAL STATION)	
NORFOLK, Norfolk, VA, Employer)	
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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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 14, 2023 appellant filed a timely appeal from a May 2, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from the last merit decision, dated January 10, 2022, to the filing of this appeal, pursuant to the

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, he asserted that oral argument should be granted because he requested additional assistance from Congress and was waiting for a response. The Board, in exercising its discretion, denies appellant's request for oral argument because 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.

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.³

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 November 16, 2021 appellant, then a 52-year-old assistant storekeeper, filed a traumatic injury claim (Form CA-1) alleging that on October 27, 2021 he sustained a neck sprain, left elbow contusion, left wrist contusion, and left knee contusion, when the driver of the vehicle, in which he was a passenger, lost control resulting in a motor vehicle accident (MVA) while in the performance of duty. On the reverse side of the claim form, his supervisor controverted the claim stating that he was not in the performance of duty at the time of the injury as he was "not on duty at the time," and was on an unauthorized excursion using a government vehicle. Appellant stopped work on November 3, 2021.

By decision dated January 10, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the October 21, 2021 employment incident occurred, as alleged. It noted that he had not provided a response to its development questionnaire. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

By letter postmarked April 20, 2023, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. He submitted a statement in which he further described the October 27, 2022 employment incident. Appellant also submitted a copy of a police accident report dated October 27, 2023, and photocopies of the damage to the work vehicle.

By decision dated May 2, 2023, OWCP denied appellant's request for a review of the written record, finding that his request was not made within 30 days of its January 10, 2022 decision. It further exercised its discretion and determined that the issue in this case could equally well be addressed by requesting reconsideration before OWCP, along with the submission of new evidence.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the May 2, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

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.”⁴ 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.⁵ 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.⁶ 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.⁷

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 a review of the written record must be made within 30 days of the date of the decision for which a review is sought.⁸ Appellant, therefore, had 30 days following OWCP’s January 10, 2022 merit decision to request a review of the written record before a representative of OWCP’s Branch of Hearings and Review. Because appellant’s request for a review of the written record was postmarked on April 20, 2023, more than 30 days after OWCP’s January 10, 2022 decision, it was untimely filed and he was, therefore, not entitled to a review of the written record as a matter of right.⁹

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 review as a matter of right. 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

⁴ *Supra* note 2 at § 8124(b)(1).

⁵ 20 C.F.R. §§ 10.616, 10.617.

⁶ *Id.* at § 10.616(a).

⁷ *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).

⁸ *Supra* note 6.

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (September 2020); *see W.N.*, Docket No. 20-1315 (issued July 6, 2021); *see also G.S.*, Docket No. 18-0388 (issued July 19, 2018).

taken, which are contrary to both logic and probable deduction from established facts.¹⁰ The Board finds that the evidence of record indicates that OWCP did not abuse its discretion by denying appellant's request for a review of the written record.¹¹ The Board finds that OWCP, in its May 2, 2023 decision, properly exercised its discretion by determining that the issue in the case could equally well be addressed through a request for reconsideration before OWCP, along with the submission of additional evidence.

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).¹²

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).

¹⁰ 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).

¹¹ *A.S.*, Docket No. 22-1227 (issued April 6, 2023).

¹² *D.S.*, Docket No. 21-1296 (issued March 23, 2022).

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2024
Washington, DC

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

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

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