

<sup>2</sup> The Board notes that, following the July 11, 2023 decision, OWCP received additional evidence which included a July 27, 2023 informational letter concerning appellant's claim for a schedule award. 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**

On January 17, 2019 appellant, then a 57-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he sustained a strain due to factors of his federal employment. In a separate statement dated January 17, 2019, he indicated that he sustained a left shoulder condition which developed over time while he was working in "OP 181." Appellant first realized his condition and that it was caused or aggravated by his employment on January 17, 2019. He stopped work on January 17, 2019. On February 12, 2019 appellant underwent surgical repair of his left shoulder rotator cuff tear. By decision dated January 28, 2021, OWCP accepted the claim for superior glenoid labrum lesion of left shoulder, tear/strain of left supraspinatus tendon, and impingement syndrome of left shoulder.

On May 5, 2022 appellant filed a Form CA-7 claim for wage-loss compensation for the period January 17 through July 15, 2019. He also requested a schedule award.

In a development letter dated May 13, 2022, OWCP informed appellant of the deficiencies in the medical evidence regarding disability for work during the period claimed from January 17 through July 15, 2019. It advised regarding the additional medical evidence needed to establish the claim. OWCP afforded appellant 30 days to submit the requested information.

By decision dated August 30, 2022, OWCP denied appellant's claim for disability compensation for the period January 17 through July 15, 2019, finding that the medical evidence of record failed to establish that he was disabled as a result of his accepted work-related medical conditions.

OWCP received additional medical evidence following its August 30, 2022 decision regarding his work restrictions.

On June 5, 2023 appellant resubmitted a copy of the April 30, 2022 Form CA-7 claim for wage-loss and schedule award compensation. He did not submit any medical evidence in support of a schedule award.

In a development letter dated June 7, 2023, OWCP informed appellant of the medical evidence necessary to submit a schedule award claim, and the process to complete a claim.

In a June 7, 2023 informational letter, OWCP indicated that it had rendered a decision on appellant's wage-loss claim on August 30, 2022 and that he should follow his appeal rights. With regards to appellant's claim for a schedule award which he had also filed on the Form CA-7 received on June 5, 2023, OWCP advised him to submit a separate claim with necessary evidence as described in its June 7, 2023 letter.

In an appeal request form, which appellant signed on July 22, 2023 he requested a review of the written record before a representative of OWCP's Branch of Hearings and review regarding

OWCP's August 30, 2022 decision. The envelope was postmarked June 23, 2023. Appellant included a copy of OWCP's June 7, 2023 informational letter regarding his schedule award request.

By decision dated July 11, 2023, OWCP denied appellant's request for an oral hearing as untimely filed, finding that his request was not made within 30 days of its August 30, 2022 decision. It, therefore, concluded that he was not entitled to a hearing as a matter of right. OWCP further exercised its discretion and determined that the issue in this case could be equally well addressed through a request for reconsideration along with the submission of new evidence which establishes whether he was entitled to disability compensation for the period January 17 through July 15, 2019 due to the January 17, 2019 work injury.

### **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>3</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>4</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>5</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>6</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 an oral hearing or review of the written record must be made within 30 days of the date of the decision for which review is sought.<sup>7</sup> Because appellant's request for review of the written record, which was postmarked June 23, 2023, was received by OWCP on June 26, 2023 it postdated OWCP's August 30, 2022 decision by more

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<sup>3</sup> *Id.* at § 8124(b)(1).

<sup>4</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>5</sup> *Id.* at § 10.616(a).

<sup>6</sup> *G.H.*, Docket No. 22-0122 (issued May 20, 2022); *J.T.*, Docket No. 18-0664 (issued August 12, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>7</sup> 20 C.F.R. §§ 10.616, 10.617 and 10.618.

than 30 days. This request was, therefore, untimely filed. Section 8124(b)(1) is unequivocal on the time limitation for filing a request for a hearing.<sup>8</sup>

While there is correspondence from OWCP dated June 7, 2023, the letters were purely informational in nature and do not constitute a final adverse decision of OWCP from which appellant may properly appeal.<sup>9</sup> Consequently, the Board finds that appellant was not entitled to a review of the written record as a matter of right.<sup>10</sup>

The Board further finds that OWCP, in its July 11, 2023 decision, properly exercised its discretionary authority, as appellant's claim for disability compensation for the period January 17 through July 15, 2018 could be equally well addressed through a reconsideration request.

The Board has held that the only limitation on OWCP's authority is reasonableness.<sup>11</sup> 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> In this case, the evidence of record does not establish that OWCP abused its discretion by denying appellant's request for a review of the written record before an OWCP hearing representative.<sup>13</sup>

### **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).

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<sup>8</sup> See *S.N.*, Docket No. 22-1048 (issued April 3, 2023); see also *M.M.*, Docket No. 19-1171 (issued October 22, 2019); *William F. Osborne*, 46 ECAB 198 (1994).

<sup>9</sup> See *Order Dismissing Appeal, K.S.*, Docket No. 20-1401 (issued March 17, 2021); *Order Dismissing Appeal, S.U.*, Docket No. 20-0636 (issued December 3, 2020).

<sup>10</sup> See *S.H.*, Docket No. 23-0742 (issued November 27, 2023); *D.S.*, Docket No. 21-1296 (issued March 23, 2022).

<sup>11</sup> *R.M.*, Docket No. 19-1088 (issued November 17, 2020). See also *E.S.*, Docket No. 18-1750 (issued March 11, 2019).

<sup>12</sup> *T.B.*, Docket No. 20-0158 (issued March 18, 2022); *T.G.*, Docket No. 19-0904 (issued November 25, 2019); see *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>13</sup> *S.H.*, *supra* note 10; *J.G.*, Docket No. 19-0555 (issued March 14, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 11, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2024  
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