

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

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F.V., Appellant )  
and ) Docket No. 23-0387  
DEPARTMENT OF HOMELAND SECURITY, )  
U.S. CUSTOMS AND BORDER PROTECTION, )  
EL PASO BORDER PATROL STATION, )  
El Paso, TX, Employer )  
Issued: July 8, 2025

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*Appearances:*

*Appellant, pro se*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REVERSING CASE**

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

On January 23, 2023 appellant filed a timely appeal from a December 13, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0387.

On July 14, 2021 appellant, then a 55-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on July 13, 2021 he experienced severe pain and discomfort in his right knee when he exited a vehicle, and bent his knee in an upward motion while in the performance of duty. He stopped work on July 21, 2021.

By decision dated August 30, 2021, OWCP accepted that the July 13, 2021 employment incident occurred as alleged, but denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed condition and the accepted July 13, 2021 employment incident.

On September 13, 2021 OWCP received a timely request from appellant for a review of the written record by a representative of OWCP's Branch of Hearings and Review regarding OWCP's August 30, 2021 decision. However, it did not process appellant's request. On

September 13, 2022 OWCP received appellant's request for reconsideration of its August 30, 2021 decision.

By decision dated December 13, 2022, OWCP denied appellant's September 13, 2022 request for reconsideration, finding that it was untimely filed, and failed to demonstrate clear evidence of error.

The Board, having duly considered this matter, finds that the case is not in posture for decision.

Section 8124(b)(1) of the Federal Employees' Compensation Act (FECA), concerning a claimant's entitlement to a hearing before an OWCP hearing representative, provides in pertinent part: "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 the issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>1</sup> Section 10.615 of OWCP's federal regulations, implementing this section of FECA, provides that a claimant who requests a hearing can choose between two formats, either an oral hearing or a review of the written record by an OWCP hearing representative.<sup>2</sup> The date of filing is fixed by postmark or other carrier's date marking.<sup>3</sup>

According to OWCP's procedures, if a request for a hearing in the form of a request for a review of the written record is received in the case file and is not properly indexed as such a request, OWCP's Branch of Hearings and Review shall be notified as soon as possible so that a Branch of Hearings and Review record can be created and the request can be tracked,<sup>4</sup> and acted upon.

The Board finds that, on September 13, 2021, appellant filed a timely request for review of the written record regarding OWCP's August 30, 2021 decision.<sup>5</sup> The case must be remanded to OWCP for it to forward appellant's timely request for review of the written record to its Branch of Hearings and Review, pursuant to OWCP's procedures.<sup>6</sup> An OWCP hearing representative shall conduct such a review and, following such further development as deemed necessary, shall issue a *de novo* decision. Accordingly,

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<sup>1</sup> 5 U.S.C. § 8124(b)(1).

<sup>2</sup> 20 C.F.R. § 10.615.

<sup>3</sup> *Id.* at § 10.616(a).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.3b (September 2020). OWCP's procedures further provide that OWCP should notify its Branch of Hearings and Review by advising the Branch Chief and Assistant Chief via e-mail of the untracked request. *Id.*

<sup>5</sup> See *supra* notes 1 through 3.

<sup>6</sup> See *supra* note 4.

**IT IS HEREBY ORDERED THAT** the December 13, 2022 decision of the Office of Workers' Compensation Programs is reversed, and the case is remanded for further proceedings consistent with this order of the Board.

Issued: July 8, 2025  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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