

<sup>2</sup> The Board notes that, following the August 6, 2024 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provide: "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, pursuant to 5 U.S.C. § 8124(b).

## **FACTUAL HISTORY**

On June 26, 2018, appellant, then a 54-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her right arm and back while in the performance of duty. She explained that, while unloading a trailer with a forklift, the driver pulled away, causing her to dangle in the forklift between the trailer and the platform. Appellant stopped work on the date of injury. OWCP accepted the claim for permanent aggravation of adhesive capsulitis of the right shoulder, and sprains of the right shoulder, elbow, arm, knees; and cervical, thoracic, and lumbar areas of the spine. It paid appellant wage-loss compensation on the supplemental rolls effective August 11, 2018 through April 29, 2019, and effective December 16, 2020.

On September 7, 2021, OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits. It noted that she had 30 days to submit evidence and/or argument if she disagreed with the proposal. No additional evidence or argument was received.

By decision dated November 5, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, finding that the medical evidence of record established that she no longer had disability or residuals due to her accepted June 26, 2018 employment injury.

On November 24, 2021, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated April 15, 2022, OWCP's hearing representative set aside the November 5, 2021 decision and remanded the case to OWCP for further development.

By *de novo* decision dated October 28, 2022, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date.

On January 20, 2023, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review with respect to the October 28, 2022 decision.

By decision dated February 23, 2023, OWCP denied appellant's request for a review of the written record, finding that it was untimely filed. 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 supporting her claim for ongoing disability.

On July 22, 2024, appellant again requested a review of the written record by a representative of OWCP's Branch of Hearings and Review with respect to OWCP's October 28, 2022 decision.

By decision dated August 6, 2024, OWCP denied appellant's request for a review of the written record by a representative of OWCP's Branch of Hearings and Review. It found that she

was not entitled to a review as a matter of right as she had previously received a decision by OWCP's Branch of Hearings and Review on February 23, 2023. OWCP exercised its discretion and performed a limited review of the evidence submitted following reconsideration, and further denied the request as the issue in the case would be addressed equally well by appellant submitting new, relevant evidence, or argument with a valid request for reconsideration.

### **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, or the date received in OWCP's Employees' Compensation Operations & Management Portal (ECOMP), 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, pursuant to 5 U.S.C. § 8124(b).

On July 22, 2024, appellant requested a review of the written record with respect to OWCP's October 28, 2022 decision.

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 submitted on July 22, 2024, it postdated OWCP's October 28, 2022 decision by more than 30 days and, accordingly, was untimely filed. She was, therefore, not entitled to a review of the written record as a matter of right.<sup>7</sup>

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<sup>3</sup> *Supra* note 1 at § 8124(b)(1).

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

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

<sup>6</sup> *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *M.G.*, Docket No. 17-1831 (issued February 6, 2018); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>7</sup> *See K.B.*, Docket No. 21-1038 (issued February 28, 2022); *M.F.*, Docket No. 21-0878 (issued January 6, 2022); *see also P.C., id.*

OWCP, however, has the discretionary authority to grant the request, and it must exercise such discretion.<sup>8</sup> 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>9</sup> The Board finds that the evidence of record supports that OWCP did 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, 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, pursuant to 5 U.S.C. § 8124(b).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 6, 2024 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: March 6, 2025  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*; *Daniel J. Perea*, 42 ECAB 214 (1990).