

The claim was later accepted for intervertebral disc disorder with myelopathy of the lumbar region, a single episode of severe major depression without mention of psychotic behavior, a closed fracture of the cervical vertebra without spinal cord injury, chronic pain syndrome, and other nervous system complications.

On February 2, 2016 appellant requested surgical authorization for treatment of his right cervical spine *via* injection.

On April 6, 2016 OWCP denied authorization for the requested surgical procedure, noting that the treatment appeared to be intended to treat appellant's cervical disc displacement and cervical radiculopathy, which was not an accepted condition.

By form dated May 12, 2016, appellant requested a review of the written record before an OWCP hearing representative. The request was submitted *via* facsimile on June 6, 2016. Appellant submitted several medical reports and notes from physicians contemporaneous with his request for review.

By decision dated June 16, 2016, the Branch of Hearings and Review's hearing representative denied appellant's request for a review of the written record as untimely filed. OWCP's hearing representative noted that OWCP had issued its decision on April 6, 2016, but appellant's request for a review of the written record was signed and dated May 12, 2016. Consequently, he found that appellant was not entitled to a review of the written record as a matter of right, as the request was submitted more than 30 days after OWCP's decision. The hearing representative also considered whether to grant appellant a discretionary review of the written record, but determined that the issue in appellant's case could equally well be addressed by his requesting reconsideration before OWCP.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides: Before review under section 8128(a) of this title relating to reconsideration, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section 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.²

Section 10.615 of Title 20 of the Code of Federal Regulations provides that a hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record.³ The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.⁴ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.⁵ In such a case, it will determine whether to

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.615.

⁴ *Id.* at § 10.616.

⁵ *See G.W.*, Docket No. 10-782 (issued April 23, 2010). *See also Herbert C. Holley*, 33 ECAB 140 (1981).

grant a discretionary hearing or review of the written record and, if not, will so advise the claimant with reasons.

ANALYSIS

Appellant's request for a review of the written record was signed and dated May 12, 2016, and received by OWCP *via* facsimile on June 6, 2016. OWCP issued its last merit decision on April 6, 2016. The regulations provide that a request must be sent within 30 days of the date of the decision for which a review of the written record is sought.⁶ Because appellant's request dated May 12, 2016 was untimely, he was not entitled to a review of the written record as a matter of right.

OWCP, through its hearing representative, then exercised its discretion and denied appellant's request because it found that the issue of authorization of a cervical surgical procedure could be equally well addressed by requesting reconsideration before OWCP. Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP's April 6, 2016 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for review of the written record.⁷ The Board finds that OWCP properly exercised its discretionary authority in denying appellant's request for a review of the written record.⁸

Appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.⁹

CONCLUSION

The Board finds that OWCP properly denied appellant's request for a review of the written record as untimely filed under 5 U.S.C. § 8124(b).

⁶ 20 C.F.R. § 10.616(a).

⁷ See *Gerard F. Workinger*, 56 ECAB 259 (2005).

⁸ *Mary B. Moss*, 40 ECAB 640, 647 (1989). 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 known facts. See *André Thyratron*, 54 ECAB 257, 261 (2002).

⁹ 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 7, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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