

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

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<b>J.W., Appellant</b>	)	
	)	<b>Docket No. 18-1611</b>
<b>and</b>	)	<b>Issued: February 27, 2019</b>
	)	
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Tampa, FL, Employer</b>	)	
_____	)	

*Appearances:*  
*Wayne Johnson, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 19, 2018 appellant, through counsel, filed a timely appeal from a February 20, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated January 17, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether OWCP abused its discretion when it denied appellant's request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124(b)(1).

## FACTUAL HISTORY

On October 26, 2016 appellant, then a 61-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed carpal tunnel syndrome due to factors of his federal employment. In an accompanying statement, he detailed his work activities which included: sorting and casing mail in the employing establishment; loading mail and packages into a delivery vehicle; delivering mail and packages up to 70 pounds along the assigned delivery route; and unloading empty trays and packages that could not be delivered. Appellant further noted that when he was not driving and delivering mail, he was required to stand on his feet from 8:00 a.m. through the end of his shift at approximately 6:00 p.m.

By development letter dated December 1, 2016, OWCP notified appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence required. OWCP afforded appellant 30 days to provide the necessary information.

On December 19, 2016 appellant submitted a narrative response to the development questionnaire provided by OWCP wherein he again detailed his day-to-day work responsibilities.

On December 30, 2016 OWCP received results of an electromyogram and nerve conduction velocity study performed on September 27, 2016 by Dr. Samuel Farhan Siddiqui, a Board-certified neurologist. The results showed findings consistent with moderate/severe carpal tunnel syndrome in the left upper extremity.

By decision dated January 17, 2017, OWCP denied appellant's claim, finding that he had not met his burden of proof to establish fact of injury, as the medical evidence of record was insufficient to demonstrate that a medical condition had been diagnosed in connection with accepted factors of his federal employment. Thus, appellant did not meet the requirements to establish an injury as defined by FECA.

On January 17, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated February 20, 2018, OWCP's hearing representative denied appellant's request for review of the written record, finding that the request was untimely filed because it had not been made within 30 days of its January 17, 2017 decision. After exercising her discretion, she further denied the request because the relevant issue of the case could equally well be addressed by appellant requesting reconsideration and submitting evidence not previously considered by OWCP or appealing to the Board.

## 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.”<sup>3</sup>

Section 10.615 of Title 20 of the Code of Federal Regulations provides, “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.”<sup>4</sup> 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.<sup>5</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>6</sup> In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.<sup>7</sup>

## ANALYSIS

The Board finds that OWCP did not abuse its discretion when it denied appellant’s January 17, 2018 request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124(b)(1).

Appellant had 30 days from OWCP’s January 17, 2017 decision to request a review of the written record. As his request was made on January 17, 2018, more than 30 days after OWCP’s January 17, 2017 decision, he was not entitled to a review of the written record as a matter of right. Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.<sup>8</sup>

Although appellant was not entitled to a review of the written record as a matter of right, A representative of OWCP’s Branch of Hearings and Review exercised her discretion in determining whether to grant appellant’s request despite its untimely nature. In denying a discretionary hearing, the hearing representative found that the issue in the case could be equally well addressed by appellant requesting reconsideration before OWCP and submitting new evidence establishing that he sustained an injury as defined under FECA. Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP’s January 17, 2017

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<sup>3</sup> 5 U.S.C. § 8124(b)(1).

<sup>4</sup> 20 C.F.R. § 10.615.

<sup>5</sup> *Id.* at § 10.616.

<sup>6</sup> *See G.W.*, Docket No. 10-0782 (issued April 23, 2010); *see also Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>7</sup> *Id.*; *see also Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>8</sup> *See Z.D.*, Docket No. 17-1315 (issued October 12, 2017).

decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for review of the written record.<sup>9</sup>

**CONCLUSION**

The Board finds that OWCP did not abuse its discretion when it denied appellant's request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124(b)(1).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2019  
Washington, DC

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

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

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

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<sup>9</sup> See *K.S.*, Docket No. 18-0996 (issued January 23, 2019); *Gerard F. Workinger*, 56 ECAB 259 (2005).