

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

_____)
D.H., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Houston, TX, Employer)
_____)

Docket No. 22-1226
Issued: December 13, 2022

Appearances:
Joseph Baker, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER DISMISSING APPEAL

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On August 16, 2022 appellant, through her representative,² sought an appeal from a February 16, 2022 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-1226.

The Board has duly considered the matter and notes that the Board has jurisdiction to review final adverse decisions of OWCP issued under the Federal Employees' Compensation Act.³ For final adverse decisions of OWCP issued on or after November 19, 2008, the Board's review

¹ 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 an 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.

² *Id.*

³ 5 U.S.C. § 8101 *et seq.*; 20 C.F.R. §§ 501.2(c) and 501.3(a).

authority is limited to appeals, which are filed within 180 days from the date of issuance of OWCP's decision.⁴

The case record as transmitted to the Board does not contain a final adverse decision of OWCP issued within 180 days from the date of docketing of the current appeal. The 180th day following the February 16, 2022 decision was Monday, August 15, 2022. As appellant electronically filed an appeal with the Board on August 16, 2022, more than 180 days after the February 16, 2022 decision, the Board finds that the appeal docketed as No. 22-1226 is untimely filed. The Board is, thus, without jurisdiction to review the appeal.

On appeal appellant's representative requests that the 180-day time limit for filing an appeal be extended "due to medical reasons." Pursuant to the Board's *Rules of Procedure*, "The Board maintains discretion to extend the time period for filing an appeal if an applicant demonstrates compelling circumstances. Compelling circumstances means circumstances beyond the Appellant's control that prevent the timely filing of an appeal and does not include any delay caused by the failure of an individual to exercise due diligence in submitting a notice of appeal."⁵ Appellant's representative only generally asserted medical reasons for a complicating factor that prevented the timely filing of the appeal. He has not submitted evidence or argument sufficient to establish the inability to file a timely appeal.⁶ For this reason, the Board finds that this argument is insufficient to establish compelling circumstances as contemplated by the Board's implementing regulation.⁷ Therefore, the appeal will be dismissed.

The Board's decisions and orders are "final upon the expiration of 30 days from the date of their issuance."⁸

⁴ *Id.* at § 501.3(e) provides in pertinent part: Any notice of appeal must be filed within 180 days from the date of issuance of a decision of OWCP.

⁵ *Id.*; see also *L.M.*, Docket No. 21-1371 (issued October 26, 2021).

⁶ The Board notes that OWCP's February 16, 2022 decision specifically advised appellant that an ECAB appeal may be filed electronically through ECAB's electronic filing system (EFS), which was done in this case. See 20 C.F.R. § 501.3(f).

⁷ *Supra* note 4. See *L.M.*, *supra* note 5; see also *S.S.* Docket No. 10-1135 (issued June 23, 2010).

⁸ *Id.* at § 501.6(d).

IT IS HEREBY ORDERED THAT the appeal docketed as No. 22-1226 is dismissed.

Issued: December 13, 2022
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