

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

S.W., Appellant)	
)	
and)	Docket No. 23-1149
)	Issued: July 18, 2024
U.S. POSTAL SERVICE, BRISTOL POST)	
OFFICE, Bristol, CT, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 7, 2023 appellant filed a timely appeal from a June 28, 2023 merit decision and an August 16, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly denied appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b); and (2) whether appellant has met his burden of proof to establish exposure to COVID-19 in the performance of duty, as alleged.

FACTUAL HISTORY

On February 18, 2023 appellant, then a 47-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he was exposed to COVID-19 due to factors of his federal

¹ 5 U.S.C. § 8101 *et seq.*

employment. He indicated that just prior to his diagnosis, colleagues were diagnosed with COVID-19 and sent home from work. Appellant also noted that no one else in his household tested positive for COVID-19. He further indicated that he first became aware of the condition and of its relation to his federal employment on January 30, 2023. On the reverse side of the claim form, the employing establishment noted that appellant first reported his condition on February 9, 2023 and his last date of exposure was January 28, 2023. It further noted that he returned to work on April 4, 2023.

In a note dated February 6, 2023, Dr. Kendra S. Lawrence, a Board-certified internist, indicated that appellant was a patient and he related that he became sick with COVID-19 on January 30, 2023. Appellant recounted testing positive by a home test on January 31, 2023. He tested positive again based on a polymerase chain reaction (PCR) test result dated February 2, 2023. Dr. Lawrence also indicated appellant's belief that he was exposed to COVID-19 at work.

In a development letter dated March 31, 2023, OWCP advised appellant of the deficiencies in his claim. It informed him that additional factual and medical evidence was necessary to establish his claim and provided a questionnaire for his completion. Further, appellant was requested to provide evidence of a COVID-19 condition and a well-rationalized medical explanation from a physician as to how the employment factors caused or contributed to a COVID-19 condition. OWCP afforded him 60 days to respond. No response was received.

In a subsequent follow-up letter dated May 2, 2023, OWCP advised appellant that it had conducted an interim review and found that the evidence remained insufficient to support his claim. It noted that he had 60 days to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. No additional evidence was received.

By decision dated June 28, 2023, OWCP denied appellant's occupational disease claim, finding that he had not established the factual component of his COVID-19 condition claim, as he did not provide a factual statement sufficiently explaining the details surrounding his exposure to COVID-19 at work. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 26, 2023 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. In an August 8, 2023 memorandum of telephone call (Form CA-110), it advised him that his "hearings and review form" was illegible. Appellant indicated that he would rescan or mail the form. On August 11, 2023 he advised that he had uploaded a copy of the original documentation submitted on July 26, 2023.

By decision dated August 16, 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.

LEGAL PRECEDENT -- ISSUE 1

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.”²

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.”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 grant a discretionary hearing and, if not, will so advise the claimant with reasons.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly denied appellant’s request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

OWCP’s regulations provide that a request for review of the written record must be made within 30 days of the date of the decision for which a review is sought.⁷

Under OWCP’s regulations and procedures, the timeliness of a request for a review of the written record is determined on the basis of the postmark of the envelope containing the request. If the postmark is not legible, the request will be deemed timely unless OWCP has kept evidence of date of delivery on the record reflecting that the request is untimely.⁸ Otherwise, the date of the letter itself should be used.⁹

The Board notes that the case record does not contain an envelope. Therefore, the date of the request shall be used to determine timeliness.¹⁰ As appellant’s request for a review of the

² *Id.* at § 8124(b).

³ 20 C.F.R. § 10.615.

⁴ *Id.* at § 10.616.

⁵ *M.R.*, Docket No. 22-0321 (issued July 7, 2022); *G.W.*, Docket No. 10-0782 (issued April 23, 2010).

⁶ *Id.*

⁷ *Supra* note 5.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (September 2020). *See T.B.*, Docket No. 20-0158 (issued March 18, 2022).

⁹ *See M.J.*, Docket No. 21-0889 (issued May 18, 2022); *K.B.*, Docket No. 21-1038 (issued February 28, 2022); *see J.H.*, Docket No. 06-1565 (issued February 20, 2007); *James B. Moses*, 52 ECAB 465 (2001) *citing William J. Kapfhammer*, 42 ECAB 271 (1990); *see also Douglas McLean*, 42 ECAB 759 (1991).

¹⁰ *Id.*

written record was dated July 26, 2023, which was within 30 days of the June 28, 2023 decision, the request was timely filed. Accordingly, the Board finds that OWCP improperly denied appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).¹¹

ORDER

IT IS HEREBY ORDERED THAT the August 16, 2023 decision of the Office of Workers' Compensation Programs is reversed. The June 28, 2023 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: July 18, 2024
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

¹¹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.