

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

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C.S., Appellant )

and )

U.S. POSTAL SERVICE, MARGARET L. )  
SELLERS PROCESSING & DISTRIBUTION )  
CENTER, San Diego, CA, Employer )  
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**Docket No. 24-0160  
Issued: July 9, 2024**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 11, 2023 appellant filed a timely appeal from a November 29, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly denied appellant's request for an oral hearing or review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the November 29, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "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.*

## **FACTUAL HISTORY**

On July 10, 2022 appellant, then a 37-year-old Express Mail service clerk, filed an occupational disease claim (Form CA-2) alleging that he developed depression and anxiety due to factors of his federal employment. He noted that he first became aware of his conditions on February 14, 2020, and realized their relation to his federal employment on January 26, 2022. Appellant asserted that his depression and anxiety subsided when he did not work. On the reverse side of the claim form, his supervisor contended that appellant's work environment was not stressful and that employees in the Express Mail area worked unsupervised at their own pace. Appellant did not stop work.

In a July 28, 2022 development letter, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated September 7, 2022, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish the implicated factors of his federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

By appeal request form postmarked November 14, 2023, appellant appealed the September 7, 2022 decision to OWCP's Branch of Hearings and Review. He checked the boxes for both an oral hearing and a review of the written record.

By decision dated November 29, 2023, OWCP denied appellant's request for an oral hearing or review of the written record, finding that it was untimely filed pursuant to 5 U.S.C. § 8124(b). OWCP further noted that, in its discretion, it had carefully considered appellant's request and had determined that the issue of the case could equally well be addressed by requesting reconsideration and submitting additional evidence.

## **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before an OWCP representative, provides in pertinent part: "Before review under section 8128(a) of this title, 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 claim before a representative of the Secretary."<sup>3</sup> As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.<sup>4</sup> The date of filing is fixed by postmark or other carrier's date marking.<sup>5</sup>

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<sup>3</sup> *Id.* at § 8124(b)(1).

<sup>4</sup> *C.K.*, Docket No. 18-0607 (issued October 18, 2018); *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

<sup>5</sup> *See* 20 C.F.R. § 10.616(a).

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.<sup>6</sup> Specifically, the Board has held that OWCP has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to FECA, which provided the right to a hearing,<sup>7</sup> when the request is made after the 30-day period for requesting a hearing,<sup>8</sup> when the request is for a second hearing on the same issue,<sup>9</sup> and when the request is made after a reconsideration request was previously submitted.<sup>10</sup> In these instances, OWCP will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.<sup>11</sup>

### ANALYSIS

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

As noted above, OWCP's procedures provide that a request for an oral hearing or review of the written record is timely if it was mailed (as determined by the postmark or other carrier's date marking) within 30 days of the date of OWCP's decision.<sup>12</sup> Appellant, therefore, had 30 days after issuance of OWCP's September 7, 2022 decision to timely request an oral hearing before a representative of OWCP's Branch of Hearings and Review. The 30<sup>th</sup> day following the issuance of OWCP's September 7, 2022 decision was October 7, 2022. As appellant's appeal request form was postmarked on November 14, 2023, more than 30 days after OWCP's September 7, 2022 decision, it was untimely filed, and appellant was not entitled to a hearing or review of the written record as a matter of right.<sup>13</sup>

Although appellant was not entitled to a hearing or review of the written record as a matter of right, OWCP's Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing following reconsideration.<sup>14</sup> The Board has held that the only limitation on

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<sup>6</sup> *D.T.*, Docket No. 18-0871 (issued February 11, 2019); *Henry Moreno*, 39 ECAB 475, 482 (1988).

<sup>7</sup> *T.R.*, Docket No. 18-1272 (issued February 15, 2019); *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

<sup>8</sup> *See C.K.*, *supra* note 4; *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

<sup>9</sup> *See T.R.*, *supra* note 7; *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

<sup>10</sup> *R.H.*, Docket No. 07-1658 (issued December 17, 2007); *S.J.*, Docket No. 07-1037 (issued September 12, 2007). Section 10.616(a) of OWCP's regulations provides that the claimant seeking a hearing must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision. 20 C.F.R. § 10.616(a).

<sup>11</sup> *See C.K.*, *supra* note 4.

<sup>12</sup> *Supra* notes 3-5.

<sup>13</sup> *Id.*

<sup>14</sup> *K.L.*, Docket No. 23-0978 (issued March 13, 2024); *T.D.*, Docket No. 21-1063 (issued April 17, 2023); *A.S.*, Docket No. 22-1227 (issued April 6, 2023).

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 deduction from established facts.<sup>15</sup> In the present case, the evidence of record does not indicate that OWCP committed any act in connection with its denial of appellant's request which could be found to be an abuse of discretion. The Board finds that OWCP properly exercised discretionary authority in denying his request for an oral hearing or review of the written record.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 29, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>15</sup> *A.M.*, Docket No. 21-0256 (issued July 22, 2021); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).