

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

L.C., Appellant)	
)	
and)	Docket No. 24-0327
)	Issued: May 13, 2024
U.S. POSTAL SERVICE, RIVERVIEW POST)	
OFFICE, Riverview, FL, 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 January 26, 2024 appellant filed a timely appeal from an October 2, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated July 21, 2023 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.¹

ISSUE

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

¹ The Board notes that, following the October 2, 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 June 7, 2019 appellant, then a 59-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed an aggravation of Hashimoto's disease due to factors of her federal employment, including working an overburdened mail route for many months. She noted that she first became aware of her condition on November 26, 2016, and realized its relation to her federal employment on January 18, 2018. OWCP accepted appellant's claim for aggravation of Hashimoto's Thyroiditis (autoimmune thyroiditis), aggravation of hypothyroidism, and aggravation of thyroiditis. It paid her wage-loss compensation on the supplemental rolls, effective March 9, 2017, and on the periodic rolls, effective March 29, 2020.

In an April 24, 2023 letter, QTC Medical Services (QTC), OWCP's scheduling service, notified appellant that it had scheduled a second opinion examination on May 25, 2023 at 1:00 p.m. Eastern Standard Time with Dr. Marvin Mengel, a Board-certified endocrinologist, to determine the status of her accepted employment-related conditions. The letter informed appellant of her obligation to attend and cooperate with the examination and explained that her compensation benefits would be suspended for failure to report to or for obstruction of the examination, pursuant to 5 U.S.C. § 8123(d). The letter also contained the date, time, and location of her appointment and was mailed to her last known address of record in the ordinary course of business.

OWCP received reports from Dr. Liyu Liu, an osteopath Board-certified in family practice, dated May 3, 2023.

In a May 11, 2023 memorandum of telephone call (Form CA-110), OWCP advised that appellant requested to cancel her May 25, 2023 second opinion appointment due to her health conditions. Appellant indicated that she experienced stress due to the change in claims examiners and using the filing system. OWCP instructed her to submit her request in writing and provide supporting medical documentation.

Appellant submitted reports from Dr. Liu dated May 17 and 31, 2023.

In a letter dated June 8, 2023, QTC notified OWCP that appellant did not attend the appointment scheduled for May 25, 2023, with Dr. Mengel.

In a notice dated June 28, 2023, OWCP proposed to suspend appellant's wage-loss compensation and medical benefits because she failed to attend the May 25, 2023 medical examination with Dr. Mengel without providing good cause for her nonattendance. It again informed her that 5 U.S.C. § 8123(d) provided that, if an employee refused to submit to or obstructed an examination, his or her right to compensation would be suspended until the refusal or obstruction stops. OWCP noted that appellant had claimed she could not attend a second opinion examination due to her health conditions, and it afforded her 14 days to submit a new and pertinent explanation and evidence of good cause for not attending the examination with Dr. Mengel. It instructed her to contact OWCP immediately if she intended to report to a rescheduled second opinion examination.

On July 17, 2023 appellant provided a statement noting that she was unable to attend the second opinion examination on May 25, 2023. In support of her statement, she submitted another

statement dated May 28, 2021, laboratory results from 2021, reports from Dr. Ruth Gettes, a Board-certified psychiatrist, from February 11, 2021 through July 14, 2023, reports from Dr. Liu dated July 5 and July 19, 2023, and a research article regarding stress.

By decision dated July 21, 2023, OWCP suspended appellant's wage-loss compensation and medical benefits, effective that date, pursuant to 5 U.S.C. § 8123(d), due to her failure, without good cause, to attend or obstruct the medical examination scheduled for May 25, 2023.

In statements dated August 2 and 9, 2023, appellant responded to the notice of proposed suspension and indicated that there was a delay in getting a written explanation for not attending the May 25, 2023 second opinion evaluation, because upon receipt of the examination notification she became emotionally and mentally distressed, which heighten her illnesses. She indicated that the second opinion examination was 170 miles from her home, an approximately four-to-six-hour trip, that would be unnecessarily stressful. Appellant reported calling OWCP on May 11, 2023 to inform it that she was not going to attend the second opinion examination due to medical reasons and related to her illnesses and she was immediately cut off and told the described illnesses were not in her file. She further indicated that she was dealing with cognitive decline and trying to write a response to OWCP was too mentally challenging and stressful. Lastly, appellant related that in the beginning of July 2023 she was immobilized from a sprained ankle that occurred on June 26, 2023 and she was unable to pick up her mail until July 12, 2023.

OWCP received additional evidence. It received articles on thyroid disease; a note from Sherin George, a physician assistant, dated June 10, 2021; a report from Jingtao Chen, a nurse practitioner, dated February 24, 2023; laboratory results from 2023; an ultrasound of the thyroid dated June 16, 2023; a report from Dr. Erika Bradshaw, a Board-certified internist, dated June 28, 2023; and a report from Dr. Liu dated July 26, 2023.

On August 11, 2023 OWCP acknowledged receipt of the August 2 and 9, 2023 statements and medical documents. It instructed appellant to review the July 21, 2023 decision and exercise her appeal rights.

OWCP received photographs of her face and hands, a report from Dr. Natalia Weare-Regales, a Board-certified endocrinologist, dated December 22, 2017; a report from Dr. Beth Belof-Jasko, a Board-certified family practitioner, dated January 18, 2018; an electroencephalogram dated August 5, 2019; a report from Dr. Karna Patel, a Board-certified family practitioner, dated May 2, 2022; a report from Dr. Kervin Doctor, a Board-certified family practitioner, dated January 20, 2023; reports from Dr. Gettes dated July 13 and September 23, 2023; reports from Dr. Liu dated August 2 and September 22, 2023; reports from Dr. Xinmin Tang, a specialist in pain medicine, dated August 9 through September 19, 2023; and an EN-1032 form dated August 15, 2023.

In an appeal request form dated September 14, 2023, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In an appeal request statement dated September 14, 2023, appellant provided a written explanation as to why she was unable to attend the May 25, 2023 second opinion examination.

By decision dated October 2, 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 this case could equally well be addressed by requesting reconsideration before OWCP, along with the submission of new evidence.

LEGAL PRECEDENT

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." Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary. A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration. Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.

ANALYSIS

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

As noted above, a request for a review of the written record must be made within 30 days after the date of the issuance of an OWCP final decision. Appellant, on September 14, 2023 requested a review of the written record. As the request was submitted more than 30 days following issuance of OWCP's July 21, 2023 decision, the Board finds that it was untimely filed. Appellant was, therefore, 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 review of the written record.

Although appellant's request for a review of the written record was untimely filed, OWCP has the discretionary authority to grant the request and it must exercise such discretion. The Board finds that, in the October 2, 2023 decision, OWCP properly exercised discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration before OWCP, along with the submission of additional evidence. The Board has held that the only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.² In this case, the Board finds that the evidence of record does not indicate that OWCP abused its discretion by denying appellant's request for a review of the written record.

² See *K.K.*, Docket No. 24-0205 (issued April 23, 2024); *S.I.*, Docket No. 22-0538 (issued October 3, 2022); *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

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

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 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