

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

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| L.M., Appellant |) | |
| |) | |
| and |) | Docket No. 25-0048 |
| |) | Issued: November 18, 2024 |
| DEPARTMENT OF VETERANS AFFAIRS, |) | |
| G.V. (SONNY) MONTGOMERY MEDICAL |) | |
| CENTER, Jackson, MS, Employer |) | |
| |) | |

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 October 19, 2024 appellant filed a timely appeal from an April 24, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated December 29, 2023, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.²

ISSUE

The issue is 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).

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted a timely request for oral argument before the Board, explaining her disagreement with OWCP's decision. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument as the Board lacks jurisdiction over the merits of a appellant's schedule award claim and the case can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

FACTUAL HISTORY

On December 16, 2000 appellant, then a 43-year-old registered nurse, filed a traumatic injury claim (Form CA-1) alleging that on June 3, 2000 she sustained a needlestick puncture by a hollow bore needle while in the performance of duty.

OWCP accepted appellant's claim for acute hepatitis C without coma; autoimmune hepatitis; type II diabetes mellitus without complications; cirrhosis of liver; localized edema; osteoporosis, without current pathological fracture; major depressive disorder; unspecified cataract; obstructive sleep apnea; atrophic disorder of skin; other atopic dermatitis; post inflammatory hyperpigmentation; stria atrophicae; xerosis cutis; and other pruritus; and open wound of hand, except fingers.

On July 4, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By development letter dated July 10, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical evidence needed to establish her schedule award claim. OWCP afforded appellant 30 days to respond.

In a letter dated July 17, 2023, appellant informed OWCP that she was unable to find a physician who was willing to comply with the specifications requested by OWCP in its July 10, 2023 development letter.

By decision dated December 29, 2023, OWCP denied appellant's claim for a schedule award as the evidence showed that her injury occurred before September 11, 2001. It explained that effective August 29, 2011, the Secretary of Labor added by regulation the skin as a new schedule member, for up to 205 weeks of compensation, for injuries sustained on or after September 11, 2001. 20 C.F.R. §10.404(b). OWCP further explained that the regulation is based on the date of injury, not when the consequential skin condition developed. It noted that appellant's traumatic injury occurred on June 3, 2000, which preceded September 11, 2001, and found that she was not eligible to receive a schedule award for the skin.

On March 17, 2024 appellant submitted *via* the Employees' Compensation and Management Portal (ECOMP) a request for a review of the written record before a representative of OWCP's Branch of Hearings and Review.

By decision dated April 24, 2024, 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

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."³ 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

³ *Supra* note 1 at § 8124(b)(1).

representative of the Secretary.⁴ A claimant is entitled to an oral 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, or the date received in ECOMP, and before the claimant has requested reconsideration.⁵ 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.⁶

ANALYSIS

The Board finds that OWCP properly found that appellant's request for a review of the written record before an OWCP hearing representative was untimely filed, pursuant to 5 U.S.C. § 8124.

OWCP's regulations provide that a request for an oral hearing or a review of the written record must be made within 30 days of the date of the decision for which a review is sought. Because appellant's request for a review of the written record was received in ECOMP on March 17, 2024, it postdated OWCP's December 29, 2023 decision by more than 30 days, and accordingly, was untimely. Appellant was, therefore, not entitled to a review of the written record as a matter of right.⁷

OWCP, however, has the discretionary authority to grant the request, and it must exercise such discretion.⁸ 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, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.⁹ In this case, the Board finds that OWCP did not abuse its discretion in denying appellant's request for a review of the written record.

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.

⁴ 20 C.F.R. §§ 10.616, 10.617.

⁵ *Id.* at § 10.616(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024).

⁶ *See P.G.*, Docket No. 24-0447 (issued August 12, 2024); *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁷ *See K.B.*, Docket No. 21-1038 (issued February 28, 2022); *M.F.*, Docket No. 21-0878 (issued January 6, 2022); *see also P.C.*, Docket No. 19-1003 (issued December 4, 2019).

⁸ *Id.*

⁹ *Id.*; *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 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