

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

G.W., Appellant)	
)	
and)	Docket No. 24-0834
)	Issued: October 30, 2024
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Richmond, VA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 12, 2024 appellant filed a timely appeal from a May 21, 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 August 21, 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

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted a timely request for oral argument before the Board, explaining his 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 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.

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).

FACTUAL HISTORY

On April 30, 2013 appellant, then a 58-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on April 29, 2013 he broke his right arm and elbow when he tripped over a towbar while in the performance of duty. OWCP accepted the claim for closed fracture of the right ulna olecranon process, and right lesion of the ulnar nerve. It paid appellant wage-loss compensation on the supplemental rolls from June 15 until November 29, 2013.

On July 5, 2023 appellant filed a notice of recurrence of disability (Form CA-2a). He noted the date of his initial injury, but he did not indicate the date of recurrence of disability, or date of recurrence of medical treatment.

By development letter dated July 18, 2023, OWCP advised appellant of the deficiencies of his recurrence claim. It informed him of the type of evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received within the time allotted.

By decision dated August 21, 2023, OWCP denied appellant's claim for a recurrence. It found that he had not established that he required additional medical treatment due to a worsening of the accepted work-related conditions, without intervening cause.

Appellant submitted responses to the July 18, 2023 OWCP questionnaire dated October 17, 2023, in which he explained that his arm was never the same, following his elbow fracture, and that his pain had worsened. He also noted that he had retired from the employing establishment.

OWCP received an October 4, 2023 report from a physician assistant.

In a February 23, 2024 statement, appellant noted that his doctor recommended surgery on his elbow.

In a letter dated April 12, 2024, OWCP explained that it had received appellant's request for additional medical care. It noted that at least one of his appeal rights from the August 21, 2023 decision had not expired, and that he could pursue that appeal right.

OWCP received a September 21, 2023 x-ray report of appellant's right elbow.

On May 9, 2024 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated May 21, 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 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 Employees’ Compensation and Management Portal (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 postmarked May 9, 2024, it postdated OWCP’s August 21, 2023 decision by more than 30 days, and accordingly, was untimely. He 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 the evidence of record

³ *Supra* note 1 at § 8124(b)(1).

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).

indicates that OWCP did not abuse its discretion in connection with its denial of 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 determined that appellant's request for a review of the written record was untimely filed, pursuant to 5 U.S.C. § 8124.

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 30, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board