

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

_____)
B.K., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
ST. CLOUD VA MEDICAL CENTER,)
St. Cloud, MN, Employer)

Docket No. 23-0578
Issued: May 2, 2023

Appearances:
*Melford V. McCormick, for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER DISMISSING APPEAL

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On February 2, 2023 appellant, through his representative, filed an appeal from a March 29, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 23-0578.

The Board has duly considered the matter and notes that the Board has jurisdiction to review final adverse decisions of OWCP issued under the Federal Employees' Compensation Act.² For final adverse decisions of OWCP issued on or after November 19, 2008, the Board's

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101, *et seq.*; 20 C.F.R. §§ 501.2(c) and 501.3(a).

review authority is limited to appeals which are filed within 180 days from the date of issuance of OWCP's decision.³

The 180th day following the March 29, 2022 decision was September 25, 2022. As appellant did not file an appeal with the Board until February 2, 2023, more than 180 days after the March 29, 2022 OWCP decision, the Board finds that the appeal docketed as No. 23-0578 is untimely filed. The Board is without jurisdiction to review the appeal. Appellant's representative proffered that appellant's appeal is untimely because he relocated. However, this explanation is insufficient to establish compelling circumstances as contemplated by section 501.3(e) of the Board's *Rules of Procedure*.⁴ Accordingly,

IT IS HEREBY ORDERED THAT the appeal docketed as No. 23-0578 is dismissed.⁵

Issued: May 2, 2023
Washington, DC

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

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

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

³ 20 C.F.R. § 501.3(e) provides in pertinent part: "Any notice of appeal must be filed within 180 days from the date of issuance of a decision of the OWCP."

⁴ 20 C.F.R. § 501.3(e): "Any notice of appeal must be filed within 180 days from the date of issuance of a decision of the OWCP. The Board maintains discretion to extend the time period for filing an appeal if an applicant demonstrates compelling circumstances. Compelling circumstances means circumstances beyond the Appellant's control that prevent the timely filing of an appeal and does not include any delay caused by the failure of an individual to exercise due diligence in submitting a notice of appeal."

⁵ The Board's decisions and orders are "final upon the expiration of 30 days from the date of their issuance." *Id.* at § 501.6(d).