

² For final adverse OWCP decisions issued prior to November 19, 2008, a claimant has up to one year to appeal to the Board. *See* 20 C.F.R. § 501.3(d)(2) (2008). For final adverse decisions issued on or after November 19, 2008, a claimant has 180 days to file an appeal with the Board. *See* C.F.R. § 501.3(e) (2009).

FACTUAL HISTORY

On January 27, 2010 appellant, then a 63-year-old supervisor of distribution operations, filed an occupational disease claim alleging that she sustained tendinitis in the performance of duty. She indicated that she became aware of the disease on January 27, 2010. Appellant did not stop work.

In a March 19, 2010 decision, OWCP denied appellant's claim. It found that there was no medical evidence that provided a diagnosis which could be connected to the event.

On April 5, 2010 appellant requested a telephonic hearing, which was later changed to a request for a review of the written record.

By decision dated September 17, 2010, OWCP's hearing representative set aside the March 19, 2010 decision and remanded the case for additional medical development.³

After further development, in a decision dated March 9, 2011, OWCP denied appellant's claim. It found that the medical evidence did not establish that her claimed tendinitis condition was related to her work.

On February 21, 2013 appellant requested an oral hearing.

In a decision dated March 14, 2013, OWCP found that appellant was not entitled to a hearing as a matter of right as her request was not made within 30 days of issuance of the March 9, 2011 decision. It also determined that it would not grant a discretionary hearing for the reason that the issue in the case could equally well be addressed by requesting reconsideration and submitting new evidence not previously considered pertaining to her occupational disease claim.

LEGAL PRECEDENT

Section 8124 of FECA provides that a claimant is entitled to a hearing before an OWCP representative when a request is made within 30 days after issuance of an OWCP final decision.⁴

Section 10.615 of Title 20 of the Code of Federal Regulations provide, "A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record."⁵

Section 10.616(a) of Title 20 of the Code of Federal Regulations further provide, "A claimant injured on or after July 4, 1966, who had received a final adverse decision by OWCP,

³ Pursuant to the hearing representative's instructions, OWCP referred appellant to Dr. Marvin Van Hal, a Board-certified orthopedic surgeon, who opined on February 10, 2011 that appellant did not have an employment-related condition.

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. § 10.615.

may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought."⁶

OWCP's regulations provide that a request received more than 30 days after OWCP's decision is subject to its discretion⁷ and the Board has held that OWCP must exercise this discretion when a hearing request is untimely.⁸

ANALYSIS

Appellant requested a hearing on February 20, 2013. The Board notes that the request for a hearing was made more than 30 days after OWCP issued the March 9, 2011 decision. Consequently, OWCP properly found that appellant was not entitled to a hearing as a matter of right.

OWCP properly exercised its discretion in denying a hearing upon appellant's untimely request by determining that the issue could be equally well addressed by requesting reconsideration and submitting new evidence. The only limitation on OWCP's authority is reasonableness. Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to logic and deductions from known facts.⁹ The evidence of record does not establish that OWCP abused its discretion in denying appellant's requests for a hearing under these circumstances.

On appeal, appellant argues that she submitted all of her information in a timely manner and requested that her claim be approved. The Board notes that it does not have jurisdiction over the merits of her claim. As found above, the request for a hearing was not timely and OWCP properly exercised its discretion.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for a hearing.

⁶ *Id.* at § 10.616(a).

⁷ *Id.* at § 10.616(b).

⁸ *Samuel R. Johnson*, 51 ECAB 612 (2000).

⁹ *See Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 23, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board