



## **FACTUAL HISTORY**

On December 7, 2009 appellant, then a 46-year-old mail handler, filed an occupational disease claim alleging that she sustained injury due to her work conditions. As a result of the demanding nature of her work, she started feeling pain in her neck, shoulders, and wrist, in addition to suffering from high blood pressure and headache.

In support of her claim, appellant submitted a series of statements and medical reports. Her injuries began on September 26, 2008, when a postcon gate slid down on her fingers. Appellant filed a separate claim for the September 26, 2008 injury, which was given OWCP No. xxxxxx970 and was accepted for crushing injury to the fingers of the right hand and a neck sprain.

In a supplemental statement, appellant explained that, after she returned to work, she was reassigned as a mail handler. This required activities be performed overhead, such as reaching, pushing, pulling and grabbing with hand manipulation. She alleged that her daily duty of supplying postcons should have been performed by operation of a jeep power jet, but she had not been properly trained to use a power jet. On February 14, 2010 appellant's supervisor refuted the claim, asserting that she did not require power jet training.

OWCP received reports from Dr. Dante A. Cubangbang, Board-certified in physical medicine, dated January 17 through April 20, 2010. Dr. Cubangbang noted that appellant had neck pain/cervicalgia, cervical radiculopathy, right hand pain, second traumatic arthropathy and right shoulder tendinitis. He found that appellant was totally disabled but was able to return to part-time work as of April 8, 2010.

In a June 3, 2010 decision, OWCP denied appellant's claim finding that she failed to provide an accurate description of her job duties and had not established fact of injury.

Appellant disagreed with the decision and requested an oral hearing on December 8, 2010.

In a decision dated January 7, 2011, OWCP denied appellant's request for an oral hearing. It found that the request was not timely filed. Appellant was also informed that her case had been considered in relation to the issues involved, and that the request was denied as the issues could be addressed by requesting reconsideration before OWCP and submitting evidence not previously considered.

## **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides that, before review under section 8128(a) of this title, 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 claim before a representative of the Secretary.<sup>3</sup> Section 10.616(a) of the federal regulations implementing this section of FECA provides that a claimant, injured on or after July 4, 1966,

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<sup>3</sup> 5 U.S.C. § 8124(b)(1).

who has received a final adverse decision by OWCP 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 the postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.<sup>4</sup>

OWCP, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and OWCP must exercise this discretionary authority in deciding whether to grant a hearing. OWCP's procedures, which require OWCP to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of FECA and Board precedent.<sup>5</sup>

### **ANALYSIS**

Appellant requested a hearing before OWCP's Branch of Hearings and Review in a letter dated December 8, 2010. As the request was submitted more than 30 days following issuance of the June 3, 2010 decision, it was untimely filed.

OWCP considered the matter in relation to the issue involved and found that additional evidence could be submitted with a request for reconsideration. It has administrative discretion in determining whether a hearing should be granted even though the request is untimely. 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.<sup>6</sup> Because OWCP reviewed appellant's request for hearing and exercised its discretion in denying appellant's request, the Board finds that OWCP properly denied appellant's untimely request for an oral hearing.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely.

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<sup>4</sup> *N.M.*, 59 ECAB 511 (2008).

<sup>5</sup> *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>6</sup> *Samuel R. Johnson*, 51 ECAB 612 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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