

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 9, 2010 appellant, then a 56-year-old administrative assistant, filed a claim for compensation alleging that she sustained a broken left ankle that day while walking off the elevator at the employing establishment. The employing establishment controverted the claim.

By decision dated September 2, 2010, OWCP denied appellant's claim finding that she failed to establish that she was injured in the performance of duty. It noted that, when the incident occurred, she had completed her duties and was exiting an elevator to leave the building. OWCP further found that appellant had not submitted sufficient medical evidence to establish a causal relationship between her medical condition and a work event.

On December 14, 2010 appellant requested review of the written record. The request was postmarked December 14, 2010 and received by OWCP on December 21, 2010.

By decision dated January 7, 2011, OWCP denied appellant's request for review of the written record as it was untimely filed. It further denied his request in its discretion as it determined that the issue in the case can equally well be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which establishes that he was injured in the performance of duty.

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.² Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.³ OWCP's regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁴

The Board has held that OWCP in its broad discretionary authority in the administration of FECA,⁵ has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that it must exercise this discretionary authority in deciding whether to grant a hearing.⁶ OWCP's procedures, which require it to exercise its discretion to grant or

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.615.

⁴ *Id.* at § 10.616(a).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

deny a hearing or review of the written record when the request is untimely or made after reconsideration, are a proper interpretation of Board precedent.⁷

ANALYSIS

In a decision dated September 2, 2010, OWCP denied appellant's claim for compensation. That decision is not before the Board in the present appeal. Appellant's request for a review of the written record was dated and postmarked December 14, 2010 and received by OWCP on December 21, 2010. The date of her request is determined by the date of the postmark.⁸ Appellant's December 14, 2010 request for review of the written record was made more than 30 days after the date of OWCP's September 2, 2010 decision. Therefore, it was untimely the Board finds that she was not entitled to a review of the written record as a matter of right.

OWCP has the discretionary authority to grant a review of the written record even though a claimant is not entitled as a matter of right. In its January 7, 2011 decision, it properly exercised its discretion. OWCP denied appellant's request on the basis that her claim could be adequately addressed through the reconsideration process and the submission of additional evidence. The Board has held that the only limitation on its authority is reasonableness. 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 deduction from the established facts.⁹ In the present case, OWCP did not abuse its discretion.

On appeal, appellant addresses the merits of her case. The Board only has jurisdiction over OWCP's January 7, 2011 decision which denied appellant's request for a review of the written record.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for a review of the written record as untimely under 5 U.S.C. § 8124.

⁷ *Teresa M. Valle*, 57 ECAB 542 (2006). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

⁸ 20 C.F.R. § 10.616(a). See *N.M.*, 59 ECAB 511 (2008) (a hearing request must be sent within 30 days of the date of the decision for which a hearing is sought as determined by postmark or other carrier's date marking).

⁹ *Teresa M. Valle*, *supra* note 7; *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

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

Issued: October 18, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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