



## **FACTUAL HISTORY**

On May 31, 2012 appellant, then a 44-year-old sandblast machine operator, filed an occupational disease claim alleging that he sustained pain in his low back and left leg causally related to factors of his federal employment. He was last exposed to the conditions alleged to have caused his condition on March 25, 2004.

By decision dated July 10, 2012, OWCP denied appellant's claim finding that it was not timely filed under 5 U.S.C. § 8122.

In a form dated August 8, 2012 and postmarked August 10, 2012, appellant requested a telephone hearing before a hearing representative of OWCP's Branch of Hearings and Review.

By decision dated October 25, 2012, OWCP denied the request for a telephone hearing as untimely. It exercised its discretion and determined that the issue could be equally well addressed by appellant requesting reconsideration before OWCP and submitting evidence not previously considered in support of his contention that he timely filed his occupational disease claim.

On appeal, appellant argues that he continues to experience aggravation of his low back and left leg injury caused by his employment.

## **LEGAL PRECEDENT**

Section 8124(b) 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 claim before a representative of the Secretary.<sup>2</sup> 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.<sup>3</sup> The 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.<sup>4</sup> A claimant is entitled to a hearing or review of the written record as a matter of right if the request is filed within 30 days.<sup>5</sup>

While a claimant may not be entitled to a hearing or review of the written record as a matter of right if the request is untimely, OWCP has the discretionary authority to grant the request and must properly exercise such discretion.<sup>6</sup>

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<sup>2</sup> *Id.* at § 8124(b)(1).

<sup>3</sup> 20 C.F.R. § 10.615.

<sup>4</sup> *Id.* at § 10.616(a).

<sup>5</sup> *See Leona B. Jacobs*, 55 ECAB 753 (2004).

<sup>6</sup> 20 C.F.R. § 10.616(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

### ANALYSIS

In its July 10, 2012 decision, OWCP denied appellant's occupational disease claim after finding that it was not timely filed. By letter postmarked August 10, 2012, appellant requested a telephone hearing. His request was postmarked more than 30 days after the July 10, 2012 decision. Consequently, appellant's hearing request was not timely and he was not entitled to an oral hearing as a matter of right.<sup>7</sup>

OWCP has the discretionary authority to grant a hearing even though a claimant is not entitled to such as a matter of right. In its October 25, 2012 decision, it properly exercised its discretion by notifying appellant that it had considered the matter in relation to the issue involved and determined that additional argument and evidence could be submitted with a request for reconsideration. The Board has held that the only limitation on OWCP's 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 established facts.<sup>8</sup> OWCP did not abuse its discretion in this case by denying a discretionary hearing.

On appeal, appellant argued the merits of his case. As previously noted, however, the Board does not have jurisdiction over the merits of this case. The only issue before the Board is whether OWCP properly denied his hearing request under section 8124.

### CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely under section 8124.

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<sup>7</sup> *Supra* note 4.

<sup>8</sup> *See Teresa M. Valle*, 57 ECAB 542 (2006); *Daniel J. Perea*, 42 ECAB 214 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 25, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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