

On appeal, appellant argued the merits of her case.

FACTUAL HISTORY

On December 21, 2011 OWCP accepted that appellant, then a 54-year-old postmaster, sustained respiratory conditions due to unspecified external agents and myalgia and myositis.³

By decision dated March 8, 2013, OWCP reopened appellant's claim on the basis that it had received new medical evidence. It proposed to rescind the accepted conditions.

By decision dated April 30, 2013, OWCP rescinded the accepted conditions and terminated appellant's compensation benefits effective that day.

In an appeal request form postmarked June 8, 2013, appellant requested an oral hearing before an OWCP hearing representative.

By decision dated July 25, 2013, the Branch of Hearings and Review denied appellant's request for an oral hearing finding that it was untimely filed. It was not made within 30 days of the April 30, 2013 decision. The Branch of Hearings and Review exercised its discretion and further denied the request for the reason that the relevant issue of the case could be addressed by requesting reconsideration and submitting evidence not previously considered by OWCP.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides: "Before review under section 8128(a) of this title [relating to reconsideration], a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on [his or her] claim before a representative of the Secretary."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 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 has discretion, however, to grant or deny a request that is made after this 30-day period.⁷ In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.⁸

³ On June 27, 2011 appellant filed an occupational disease claim (Form CA-2) for respiratory conditions allegedly sustained in the performance of duty.

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. § 10.615.

⁶ *Id.* at § 10.616.

⁷ See *G.W.*, Docket No. 10-782 (issued April 23, 2010). See also *Herbert C. Holley*, 33 ECAB 140 (1981).

⁸ *Id.* See also *Rudolph Bermann*, 26 ECAB 354 (1975).

ANALYSIS

Appellant had 30 days from OWCP's April 30, 2013 decision, or until May 30, 2013, to request an oral hearing. She filed a request for an oral hearing postmarked June 8, 2013, which was more than 30 days after OWCP issued the April 30, 2013 decision.⁹ Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.¹⁰ For this reason, the Board finds that the request was untimely. Because the request was not timely filed, appellant was not entitled to an oral hearing as a matter of right.

Appellant was not entitled to an oral hearing as a matter of right under section 8124(b)(1) of FECA. Exercising its discretion to grant an oral hearing, OWCP denied appellant's request on the grounds that she could equally well address any issues in her case by requesting reconsideration. Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP's April 30, 2013 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for an oral hearing.¹¹

On appeal, appellant argued the merits of her case. The Board only has jurisdiction over the July 25, 2013 nonmerit decision which denied her request for an oral hearing. The Board is precluded under its regulations from conducting a merit review.

CONCLUSION

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

⁹ Under OWCP regulations and procedures, the timeliness of a request for a hearing is determined on the basis of the postmark of the envelope containing the request. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011). If the postmark is not legible, the request will be deemed timely unless OWCP has kept evidence of date of delivery on the record reflecting that the request is untimely. *Id.*

¹⁰ See *William F. Osborne*, 46 ECAB 198 (1994).

¹¹ See *Gerard F. Workinger*, 56 ECAB 259 (2005).

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 2014
Washington, DC

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

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

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