



## **FACTUAL HISTORY**

On May 30, 2014 appellant, then a 58-year-old engineering technician, submitted a claim for traumatic injury (Form CA-1). He alleged that on May 11, 2014 he injured his right shoulder and left lower knee when a loader fell on him.

By decision dated August 22, 2014, OWCP denied appellant's claim, noting that the only evidence received along with his claim was a request for authorization of an outpatient visit.

By letter dated November 10, 2014 and received by OWCP on November 19, 2014, appellant requested an oral hearing before an OWCP hearing representative.<sup>3</sup> With his request, he included a narrative statement regarding his reason for requesting a hearing.

By decision dated December 29, 2014, the Branch of Hearings and Review denied appellant's hearing request as untimely. A hearing representative noted that OWCP had issued its decision on August 22, 2014, while appellant's hearing request was dated November 10, 2014, which was more than 30 days after OWCP's decision. He noted that the postmark date used in this decision was the date of the letter, as the postmark was illegible. Consequently, the hearing representative found that appellant was not entitled to a hearing as a matter of right, as the request was submitted more than 30 days after OWCP's decision. He also considered whether to grant appellant a discretionary hearing, but decided that the question of appellant's entitlement to compensation benefits could equally well be addressed by a request for reconsideration before OWCP.

## **LEGAL PRECEDENT**

A claimant, injured on or after July 4, 1966, who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision.<sup>4</sup> 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. The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision. If the request is not made within 30 days, a claimant is not entitled to a hearing as a matter of right. However, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing.<sup>5</sup>

## **ANALYSIS**

Appellant's November 10, 2014 hearing request was date stamped as received on November 19, 2014. The hearing representative noted that appellant's form was dated

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<sup>3</sup> The record includes an imaged copy of the envelope that contained the hearing request. However, the postmark date is illegible. The request was properly addressed to the Branch of Hearings and Review in accordance with the instructions on the appeal request form.

<sup>4</sup> 20 C.F.R. § 10.616(a).

<sup>5</sup> 5 U.S.C. §§ 8124(b)(1) and 8128(a); *Hubert Jones, Jr.*, 57 ECAB 467, 472-73 (2006); *Herbert C. Holley*, 33 ECAB 140 (1981).

November 10, 2014, which was more than 30 days after OWCP's August 22, 2014 decision. He further noted that the postmark on the request was illegible, and thus the date of the letter was used to determine timeliness in lieu of the postmark.

The Board notes that the imaged copy of the envelope does not have a legible postmark date. Where the postmark is not legible, the hearing request will be deemed timely unless OWCP has kept evidence of date of delivery on the record reflecting that the request is untimely.<sup>6</sup> As noted, the appeal request form was date stamped as having been received by the Branch of Hearings and Review on November 19, 2014. Accordingly, the evidence regarding date of delivery, as well as the date of the request itself, were more than 30 days after OWCP's August 22, 2014 decision. Appellant's request was thus untimely and he was not entitled to a hearing as a matter of right.

The Branch of Hearings and Review also reviewed appellant's request and denied it as his claim could be addressed by requesting reconsideration before OWCP. The Board finds that the hearing representative properly exercised her discretionary authority in denying appellant's request for a hearing.<sup>7</sup>

### CONCLUSION

The Board finds that the Branch of Hearings and Review properly denied appellant's request for an oral hearing as untimely.

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<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (October 2011). Where the hearing request is mailed directly to the Branch of Hearings and Review, the request will be date stamped, and both the envelope and request will be scanned into the case file. *Id.* at Chapter 2.1601.3a.

<sup>7</sup> *Mary B. Moss*, 40 ECAB 640, 647 (1989). 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 deductions from known facts. *See André Thyratron*, 54 ECAB 257, 261 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 29, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board