

**United States Department of Labor
Employees' Compensation Appeals Board**

J.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Roseland, IL, Employer**

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**Docket No. 15-1679
Issued: December 14, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 4, 2015 appellant filed a timely appeal from a June 10, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the date of the last merit decision of OWCP dated December 15, 2006, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the claim.

ISSUE

The issue is whether OWCP abused its discretion in denying appellant's request for an oral hearing.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. The law and facts of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are set forth below.

On February 11, 2005 appellant, then a 47-year-old mail processing clerk, filed an occupational disease claim (Form CA-2), asserting that workplace exposures to diesel exhaust, cleaning chemicals, and silica dust caused acute bronchitis, carbon monoxide poisoning, silicosis, and an unspecified chronic upper respiratory condition. The employing establishment confirmed the presence of silica dust and cleaning chemicals. Appellant provided medical evidence attributing her complaints to a respiratory virus and deconditioning. OWCP denied the claim by decision dated May 22, 2006 as causal relationship had not been established. Appellant then appealed to the Board. By decision and order issued December 15, 2006,² the Board affirmed OWCP's May 22, 2006 decision, finding that the medical evidence was insufficient to establish causal relationship.

In a December 15, 2008 letter received by OWCP on December 19, 2008, appellant requested reconsideration. She contended that OWCP should have developed her claim as a traumatic injury not an occupational disease. Appellant enclosed copies of medical evidence previously considered by OWCP prior to the May 22, 2006 merit decision. OWCP denied appellant's request for reconsideration by nonmerit decision dated April 3, 2009, finding that the request was untimely filed and failed to present clear evidence of error. Appellant filed an appeal with the Board. By decision issued June 17, 2010,³ the Board affirmed OWCP's April 3, 2009 decision.

In a June 9, 2011 letter, appellant again requested reconsideration. She contended that her February 11, 2005 claim was for both an occupational disease and a traumatic injury. Appellant argued that she was entitled to have received continuation of pay in either case. She provided a certificate of mailing showing that she mailed a reconsideration request to an incorrect address, and an unsigned emergency room triage sheet. OWCP denied reconsideration by nonmerit decision dated September 21, 2011, finding that appellant's request did not raise substantive legal questions or contain new, relevant evidence. Appellant then filed an appeal with the Board. By decision issued November 28, 2012,⁴ the Board affirmed the September 21, 2011 decision denying reconsideration.

On November 21, 2013 appellant again requested reconsideration. She asserted that the evidence established that exposure to diesel fumes, silica dust, or chemicals on January 3, 20, or 28, 2005 caused a traumatic injury. Appellant contended that her December 15, 2008 reconsideration request was timely filed, and she asserted that OWCP should have referred her to a second opinion specialist. She also alleged a pattern of malfeasance and lying by the

² Docket No. 06-1980 (issued December 15, 2006).

³ Docket No. 09-2374 (issued June 17, 2010).

⁴ Docket No. 12-0948 (issued November 28, 2012).

employing establishment officials and OWCP in the development of her claim. Appellant submitted copies of claim forms, medical evidence, and her statements previously of record. She also provided August and September 2013 correspondence to and from the employing establishment explaining the procedural history of her claim.

By nonmerit decision dated February 20, 2014, OWCP denied appellant's November 21, 2013 request for reconsideration, finding that the evidence submitted did not raise substantive legal questions or include new, relevant evidence.

Appellant again requested reconsideration on February 14, 2015. She asserted that new medical evidence was sufficient to establish her claim. Appellant provided a January 29, 2015 letter from Dr. Christian Altman, an anesthesiologist who treated her on January 20, 2005. Dr. Altman noted that he did not remember appellant and recommended that she contact the physician who performed a follow-up examination. Appellant also provided January 26, 2015 pulmonary function test results without interpretation, and a computerized tomography (CT) scan of the chest, showing minimal interstitial scarring and three micronodules.

In a March 9, 2015 letter, OWCP advised appellant that she could not request reconsideration of the February 20, 2014 nonmerit decision, as her only right of appeal was to the Board.

On April 8, 2015 appellant requested an oral hearing with the Branch of Hearings and Review. She reiterated her allegations of fraud by OWCP and the employing establishment.

By decision dated June 10, 2015, OWCP denied appellant's request for a hearing regarding the February 20, 2014 decision. It found that, under section 8124(b) of FECA,⁵ she was not entitled to a hearing as a matter of right as she previously requested reconsideration. OWCP exercised its discretion and performed a limited review of the evidence following reconsideration, and further denied the claim as the issue in the case would be addressed equally well by submitting new, relevant evidence or argument accompanying a valid request for reconsideration.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before a hearing representative, states: Before review under section 8128(a) of this title, 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.⁶ 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. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.⁷ The Branch of Hearings

⁵ On its face the June 10, 2015 decision cites to section 8125(b)(1). The Board notes that this is a harmless, typographical error.

⁶ 5 U.S.C. § 8124(b)(1).

⁷ 20 C.F.R. § 10.615.

and Review, 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 must exercise this discretionary authority in deciding whether to grant a hearing.⁸ The Board has held that it must exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).⁹

ANALYSIS

On April 8, 2015 appellant requested an oral hearing with the Branch of Hearings and Review. Because she had previously requested reconsideration under section 8128 of FECA, she was not entitled to a hearing as a matter of right under section 8124(b)(1). OWCP exercised its discretion and determined that the issue in the case could be resolved equally well through a request for reconsideration and the submission of additional evidence. The Board therefore finds that OWCP did not abuse its discretion in denying appellant's request for an oral hearing in its June 10, 2015 decision.

On appeal appellant contends that she sustained a traumatic injury on January 20, 2005. She alleges that OWCP and the employing establishment conspired to deny her claim. These arguments pertain to the merits of the claim, which are not before the Board on the present appeal.

CONCLUSION

The Board finds that OWCP did not abuse its discretion in denying appellant's request for an oral hearing.

⁸ *D.M.*, Docket No. 08-1814 (issued January 16, 2009).

⁹ *See R.T.*, Docket No. 08-0408 (issued December 16, 2008).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 10, 2015 is affirmed.

Issued: December 14, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board