

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

B.T., Appellant

and

**U.S. POSTAL SERVICE, BULK MAIL
CENTER, Memphis, TN, Employer**

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**Docket No. 14-1823
Issued: January 5, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 19, 2014 appellant timely appealed the July 8, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), which issued its latest merit decision on December 23, 2013; more than 180 days prior to the filing of the instant appeal. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

ISSUE

The issue is whether the Branch of Hearings and Review properly denied appellant's request for a hearing.

FACTUAL HISTORY

Appellant, a 55-year-old clerk, injured her right knee in the performance of duty on August 3, 1981. OWCP accepted her claim for right medial meniscus tear, right patella

¹ 5 U.S.C. §§ 8101-8193.

dislocation -- closed, chondromalacia of the right patella, and right knee arthritis. In October 2013, it expanded appellant's claim to include left lateral ankle sprain and left closed fracture of the fifth metatarsal bone.²

By decision dated December 23, 2013, OWCP denied 154.68 hours of claimed lost wages during the period June 8 through October 19, 2013.³

Appellant subsequently requested an oral hearing utilizing the appeal request form that accompanied OWCP's December 23, 2013 decision. Although the request is dated January 1, 2014, the Branch of Hearings and Review's date stamp indicates appellant's hearing request was not received until February 4, 2014.⁴

By decision dated July 8, 2014, the Branch of Hearings and Review denied appellant's hearing request as untimely. An OWCP hearing representative noted that OWCP issued its decision on December 23, 2013 and appellant's hearing request was postmarked January 30, 2014; which was more than 30 days after OWCP's decision. Consequently, she found that appellant was not entitled to a hearing as a matter of right. The hearing representative also considered whether to grant appellant a discretionary hearing, but decided that the question of appellant's entitlement to wage-loss compensation could equally well be addressed by her requesting 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.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 The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁷ 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.⁸

² Appellant injured her left lower extremity on May 13, 2013 when her right knee buckled causing her to twist her left ankle.

³ OWCP authorized payment for a total of 6.57 hours for medical appointments on August 8 and October 18, 2013.

⁴ 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.

⁵ 20 C.F.R. § 10.616(a).

⁶ *Id.*

⁷ *Id.*

⁸ 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).

ANALYSIS

Appellant's January 1, 2014 hearing request is date stamped as having been received on February 4, 2014. The hearing representative noted that the request was postmarked January 30, 2014; which is more than 30 days after OWCP's December 23, 2013 decision. However, 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.⁹ As noted, the appeal request form is date stamped as having been received on February 4, 2014. Accordingly, the evidence regarding date of delivery reflects that appellant's request is untimely. Therefore, appellant was not entitled to a hearing as a matter of right. The Branch of Hearings and Review also denied her request on the basis that her claim for wage-loss compensation could be addressed by requesting reconsideration before OWCP. The Board finds that the hearing representative properly exercised her discretionary authority in denying her request for a hearing.¹⁰

CONCLUSION

The Board finds that the Branch of Hearings and Review properly denied appellant's hearing request.

⁹ 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.

¹⁰ *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 July 8, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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