

FACTUAL HISTORY

On August 8, 2000 appellant, a 53-year-old mail handler, filed an occupational disease claim alleging that her chronic tendinitis was employment related. She did not stop work. The Office accepted the claim for right shoulder tendinitis on September 26, 2000.²

On October 17, 2000 appellant filed an occupational disease claim alleging that her carpal tunnel syndrome was employment related. She stopped work on September 30, 2000.³ The Office accepted the claim for bilateral carpal tunnel syndrome with bilateral surgical releases and subsequently accepted right trigger thumb.⁴ On January 24, 2002 the Office placed appellant on the periodic rolls for receipt of temporary total disability.

By decision dated March 7, 2003, the Office terminated appellant's wage-loss compensation benefits pursuant to 5 U.S.C. § 8106(c), on the grounds that she refused an offer of suitable work. The Office noted that, based on the suitable work termination, appellant was not entitled to compensation under a schedule award for permanent impairment.⁵

On April 14, 2003 appellant filed a claim for a schedule award. In a June 10, 2003 letter, the Office informed her that she was not entitled to a schedule award or compensation for wage loss and advised her to refer to the appeal rights accompanying the March 7, 2003 decision.

In a letter dated July 7, 2003 and postmarked July 8, 2003, appellant requested an oral hearing on the decision terminating her compensation and denying her schedule award request.

By decision dated February 4, 2004, the Office denied appellant's request for an oral hearing on the grounds that she failed to timely file her request. The Office explained that her request for an oral hearing was received more than 30 days after the issuance of the March 7, 2003 decision and, therefore, she was not entitled to a hearing or a review of the written record as a matter of right. Additionally, the Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issue could be addressed by requesting reconsideration and submitting evidence not previously considered by the Office to establish that she is entitled to continuing compensation under the Act.

LEGAL PRECEDENT

Section 8124(b)(1) of the Act 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

² This was assigned claim number 10-0501904.

³ Appellant retired from the employing establishment effective May 31, 2002. Subsequently, she filed election forms on July 12, 2002 and January 7, 2003 to receive compensation under the Civil Service Retirement System instead of under the Federal Employees' Compensation Act.

⁴ This was assigned claim number. 10-0504517. By letter dated January 30, 2001, the Office advised appellant that her claim numbers 10-0504517 and 10-0501904 were doubled into one master file under claim number 10-0504517.

⁵ See 20 C.F.R. § 10.517(b). Appellant remained in receipt of medical benefits for her accepted conditions.

the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”⁶ Section 10.615 of the federal regulation implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.⁷ 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.”⁸ The regulation also provides that “the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.”⁹ Although there is no right to an oral hearing or a review of the written record if not requested within the 30-day time period, the Office may within its discretionary powers grant or deny appellant’s request and must exercise that discretion.¹⁰ In such cases, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.¹¹

ANALYSIS

Appellant’s July 8, 2003 request for an oral hearing was made more than 30 days after the date of issuance of the Office’s March 7, 2003 decision terminating her wage-loss compensation benefits pursuant to 5 U.S.C. § 8106(c). As the request was not filed within 30 days of the Office’s March 7, 2003 decision, she is not entitled to an oral hearing as a matter of right. The Office properly found that appellant was not entitled to an oral hearing as a matter of right because her request for an oral hearing was not made within 30 days of the Office’s decision.

While the Office also has the discretionary power to grant an oral hearing when a claimant is not entitled to an oral hearing as a matter of right, the Office, in its March 7, 2003 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant’s request for an oral hearing on the basis that her claim could be addressed through a reconsideration application. The Board has held that as the only limitation on the Office’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.¹² In this case, the evidence does not establish that the Office committed any act in connection with its denial of appellant’s oral hearing request which could constitute an abuse of discretion. For these reasons, the Board finds that the Office properly exercised its discretion in denying appellant’s request for an oral argument.

⁶ 5 U.S.C. § 8124(b)(1).

⁷ 20 C.F.R. § 10.615.

⁸ 20 C.F.R. § 10.616(a).

⁹ *Id.*

¹⁰ *Delmont L. Thompson*, 51 ECAB 155 (1999); *Eddie Franklin*, 51 ECAB 223 (1999).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (June 1997).

¹² *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

CONCLUSION

The Board finds that the Office properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 4, 2004 is affirmed.

Issued: December 3, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member