

FACTUAL HISTORY

On May 7, 2009 appellant, then a 54-year-old insolvency specialist, filed a claim alleging that she sustained a right hip injury in the performance of duty on April 29, 2009: “Employee went to sit in her desk chair, chair rolled backwards and she fell to the floor.”

In a June 23, 2009 decision, the Office denied appellant’s claim. In an attached statement of appeal rights, the Office notified appellant that any hearing request must be made in writing within 30-calendar days after the date of the decision, as determined by the postmark of her letter.

In a letter postmarked August 4, 2009, appellant requested an oral hearing before an Office hearing representative.

In a decision dated August 20, 2009, the Office found that appellant’s request was untimely and that she was not entitled to a hearing as a matter of right. It considered her request and denied a discretionary hearing on the grounds that she could equally well address any issues in her case by requesting reconsideration before the Office and submitting evidence not previously considered which established that she sustained an injury in the performance of duty, as alleged.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees’ Compensation Act 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 [her] claim before a representative of the Secretary.”²

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.³ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁴ In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.⁵

ANALYSIS

Appellant had 30-calendar days from the Office’s June 23, 2009 decision, or until July 23, 2009, to request an oral hearing before an Office hearing representative. Because her

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.616(a).

⁴ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁵ *Rudolph Bermann*, 26 ECAB 354 (1975).

request was postmarked August 4, 2009, her request was untimely. Appellant was not entitled to an oral hearing as a matter of right under section 8124(b)(1) of the Act. Exercising its discretion to grant a discretionary hearing, the Office 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 the Office's June 23, 2009 decision, the Board finds that the Office did not abuse its discretion in denying appellant's untimely request for an oral hearing.⁶

CONCLUSION

The Board finds that the Office properly denied appellant's request for an oral hearing before an Office hearing representative.

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

⁶ The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988). Appellant has one year to make a timely request for reconsideration of the Office's June 23, 2009 merit decision. *See* 20 C.F.R. § 10.607.