

ISSUE

The issue is whether OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative.

FACTUAL HISTORY

In the present case, OWCP accepted bilateral carpal tunnel syndrome resulting from appellant's duties as a mail handler. By decision dated January 31, 2007, it issued a schedule award for a three percent right arm impairment commencing October 31, 2006. Appellant received wage-loss compensation through January 19, 2008 for an employment-related disability. By decision dated January 18, 2008, OWCP terminated compensation for wage-loss and medical benefits. On December 17, 2008 it issued a schedule award for a five percent permanent impairment to the left arm. Pursuant to the schedule award, appellant received compensation from January 20 to April 14, 2008.

On June 3, 2011 OWCP received an appeal request form indicating that appellant requested an oral hearing. The postmark date was May 24, 2011. Appellant did not provide a date of the request or identify the date of the decision, although the request form itself was dated January 18, 2008.

By decision dated June 29, 2011, OWCP denied the request for an oral hearing. It found the request was untimely and stated that it had exercised its discretion and determined the issue in the case could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides in pertinent part:

“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 title is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”³

As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.⁴

The Board has held that OWCP, in its broad discretionary authority to administer FECA, has power to hold hearings in circumstances where no legal provision is made for such hearings, and OWCP must exercise its discretion in such circumstances.⁵

³ 5 U.S.C. § 8124(b)(1).

⁴ See *William F. Osborne*, 46 ECAB 198 (1994).

⁵ *Mary B. Moss*; 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

ANALYSIS

A request for a hearing must, as noted above, be made within 30 days after the date of the issuance of OWCP final decision. The postmark date of the hearing request was May 24, 2011. To the extent that appellant was requesting a hearing with respect to the January 18, 2008 termination decision, the request is untimely. To the extent that appellant was requesting a hearing on the January 31, 2007 schedule award for the right arm, or the December 17, 2008 schedule award for the left arm, the request is also untimely.

Since the hearing request was untimely, appellant is not entitled to an oral hearing as a matter of right. OWCP must exercise its discretionary authority to grant or deny a hearing even though the request is untimely filed. In this case, it advised appellant that she could submit additional relevant evidence on the issue through the reconsideration process. This is considered a proper exercise of OWCP's discretionary authority.⁶

The Board accordingly finds that OWCP properly denied the request for an oral hearing. The request was untimely and OWCP exercised its discretion in denying the request.

On appeal, appellant indicated that she was not being allowed to return to work even though there was sufficient work available within her work restrictions. She referred to a recent arbitration decision in her case. If appellant has a specific claim for compensation under FECA she may pursue such a claim with OWCP. The Board can only review final adverse decisions of OWCP in a case arising under FECA.⁷ In this appeal the only final decision under review was the June 29, 2011 denial of a hearing. For the reasons noted, the Board must affirm the June 29, 2011 decision based on the evidence of record.

CONCLUSION

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

⁶ See *Mary E. Hite*, 42 ECAB 641, 647 (1991).

⁷ 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 29, 2011 is affirmed.

Issued: December 2, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board