

FACTUAL HISTORY

On June 16, 2009 appellant, then a 33-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 5, 2009 she sustained “some sort of attack” which resulted in chest pains, shortness of breath and headaches. She identified the nature of her injury as heart, chest, lungs and nerves. Appellant stopped work that same date and was treated in the emergency room. She returned to work the following day.

By letter dated June 23, 2009, the employing establishment controverted the claim stating that appellant was not in the performance of duty. In support of its challenge, it submitted a witness statement from James B. Putman, a customer service supervisor, who described the events leading to appellant’s traumatic injury claim.

Appellant submitted a March 16, 2009 prescription note and duty status report from Dr. Thomas D. Harper, Board-certified in family medicine.

By letter dated June 26, 2009, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and asked that she respond to the provided questions within 30 days.

Appellant submitted a June 18, 2009 medical report from a Dr. Thomas A. Leaf and medical reports dated June 8 to 30, 2009 from Dr. Harper.

By decision dated July 29, 2009, OWCP denied appellant’s claim finding that the medical evidence did not demonstrate that the injury was causally related to the established June 5, 2009 employment incident.

Appellant submitted a number of additional documents including a May 8, 2009 narrative statement, a July 22, 2009 12-page narrative statement attached to OWCP’s July 26, 2009 development letter which was signed and dated by her, additional medical reports, an April 17, 2009 U.S. Postal Service decision for appellant’s grievance, a June 24, 2009 Family and Medical Leave Act Designation Notice and witness statements.

On March 31, 2010 appellant requested an oral hearing before OWCP’s hearing examiner.

By decision dated April 23, 2010, the Branch of Hearings and Review denied appellant’s request for a review of the written record finding that her request was not made within 30 days of the July 29, 2009 OWCP decision. The Branch of Hearings and Review further determined that the issue in the case could equally well be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which establishes that her condition was causally related to factors of her federal employment.

LEGAL PRECEDENT

A claimant for compensation not satisfied with a decision by OWCP 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.² According to 20 C.F.R. § 10.615, a claimant shall be afforded a choice of an oral hearing or a review of the written record.³ The regulations provide that a request for a hearing or review of the written record must be made within 30 days as determined by the postmark or other carrier's date marking, of the date of the decision.⁴ A claimant is not entitled to a hearing or a review of the written record as a matter of right if the request is not made within 30 days of the date of OWCP's decision.⁵ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.⁶ In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.⁷

ANALYSIS

In the present case, appellant requested an oral hearing on March 31, 2010 and OWCP found that the reconsideration request was postmarked on that same date. Her request was made more than 30 days after the date of issuance of OWCP's prior decision dated July 29, 2009. Therefore, OWCP properly found in its April 23, 2010 decision that appellant was not entitled to an oral hearing or examination of the written record as a matter of right because her request for an oral hearing was not made within 30 days of its July 29, 2009 decision.⁸

The Board has held that a request for reconsideration need not be on any particular form but must be in writing, identify the decision and the specific issues for which reconsideration is being requested and be accompanied by relevant and pertinent new evidence or argument not previously considered.⁹ Appellant submitted a number of documents on July 30, 2009. This submission included a narrative statement dated May 8 and July 22, 2009. Both statements predated the July 29, 2009 OWCP decision and thus, made no reference to a reconsideration request.¹⁰ In the instant case, appellant did not submit a written request for an oral hearing by August 28, 2009, 30 calendar days from OWCP's July 29, 2009 decision. Because her request was postmarked March 31, 2010, it is untimely.

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.615.

⁴ *Id.* at § 10.616(a).

⁵ *See James Smith*, 53 ECAB 188 (2001).

⁶ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁷ *Id.*

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602 (May 1991).

⁹ *Vincente P. Taimanglo*, 45 ECAB 504 (1984); *Darrell Stovall*, Docket No. 99-2562 (issued March 14, 2001). *See* Federal Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1601.2(a) (May 1996).

¹⁰ The Board notes that the record did not yet contain a final merit decision regarding appellant's claim. Thus, there could be no appeal with respect to any interlocutory matter disposed of during the pendency of the case.

Although appellant's request for a review of the written record was untimely, OWCP has the discretionary authority with respect to granting the request and it must exercise such discretion.¹¹ In its April 23, 2010 decision, OWCP properly exercised its discretion by stating that it had considered the matter and had denied appellant's request for an oral hearing because the issue of causal relationship could be addressed through a reconsideration application. The Board has held that the only limitation on OWCP's authority is reasonableness and an 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 of record does not indicate that OWCP abused its discretion in its denial of appellant's request for an oral hearing.

On appeal, appellant contends that she has provided extensive documentation and proof that her condition was a result of the work-related event. As noted, the Board does not have jurisdiction over the merits of this case and therefore will not review evidence submitted by appellant.

Appellant may submit new evidence or argument with a written request for reconsideration to the Office within one year of OWCP's last merit decision of July 29, 2009, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly denied appellant's March 31, 2010 request for an oral hearing.

¹¹ See *Cora L. Falcon*, 43 ECAB 915 (1992).

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 23, 2010 is affirmed.

Issued: July 25, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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