

FACTUAL HISTORY

On March 9, 2010 appellant, then a 29-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 9, 2010 she sustained a dog bite on her left leg while in the performance of duty. Her claim was accepted for dog bite of the left leg. Appellant received 45 days of continuation of pay (COP) from March 10 to April 23, 2010 and was paid administrative leave pending job offer from April 24 to May 17, 2010.

On May 21, 2010 appellant filed a claim for wage-loss compensation for the period May 18 to 21, 2010. On July 15, 2010 she filed a claim for wage-loss compensation for the period May 22 to July 9, 2010.

By decision dated July 26, 2010, OWCP denied appellant's wage-loss compensation claims.

By appeal form dated August 10, 2010, postmarked September 15, 2010 and received by OWCP on September 20, 2010, appellant requested an oral telephone hearing before OWCP's hearing representative in connection with her claim.

By decision dated November 4, 2010, OWCP's Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that it was untimely. It exercised its discretion and further denied her request on the basis that the issue in the case could be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which established that the claimed periods of disability were a direct cause of or consequential to the March 9, 2010 employment injury.²

LEGAL PRECEDENT

Section 8124(b)(1) of FECA 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."³

Section 10.615 of Title 20 of the Code of Federal Regulations provide, "A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record."⁴ 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.⁵ OWCP has discretion, however, to grant or

² The Board notes that, following the issuance of the November 4, 2010 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1).

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

⁵ *Id.* at § 10.616(a).

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

Appellant had 30-calendar days from OWCP's July 26, 2010 merit decision or until August 25, 2010, to request an oral hearing. Because her request was postmarked September 15, 2010, her request was untimely. Appellant was not entitled to an oral hearing as a matter of right under section 8124(b)(1) of FECA. Exercising its discretion to grant an oral hearing, OWCP denied her request on the grounds that she could equally well address any issues in her case by requesting reconsideration. 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.⁸ Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP's July 26, 2010 decision, the Board finds that it did not abuse its discretion in denying appellant's untimely request for an oral hearing.⁹

On appeal, appellant argues the merits of her case. The Board noted above that it only has jurisdiction over OWCP's November 4, 2010 decision which denied her request for a hearing and therefore is precluded from conducting a merit review.

CONCLUSION

The Board finds that OWCP properly found that appellant filed an untimely request for an oral hearing.

⁶ See also *Herbert C. Holley*, 33 ECAB 140 (1981); *G.W.*, Docket No. 10-782 (issued April 23, 2010).

⁷ *Id.* See also *Rudolph Bermann*, 26 ECAB 354 (1975).

⁸ See *Teresa M. Valle*, 57 ECAB 542 (2006); *Daniel J. Perea*, 42 ECAB 214 (1990).

⁹ See *Gerard F. Workinger*, 56 ECAB 259 (2005); *D.F.*, Docket No. 11-42 (issued August 1, 2011).

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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