

**United States Department of Labor
Employees' Compensation Appeals Board**

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D.C., Appellant)	
)	
and)	Docket No. 12-85
)	Issued: April 18, 2012
U.S. POSTAL SERVICE, POST OFFICE,)	
Trenton, NJ, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 11, 2011 appellant filed a timely appeal of a September 28, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Since more than 180 days elapsed from issuance of the most recent merit decision of January 26, 2011 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.²

ISSUE

The issue is whether OWCP abused its discretion by denying appellant's request for an oral hearing.

¹ 5 U.S.C. § 8101 *et seq.*

² For OWCP decisions issued prior to November 19, 2008, the Board's regulations provided up to one year to file an appeal. 20 C.F.R. § 501.3(d)(2). For OWCP decisions issued on and after November 19, 2008, a claimant has 180 days to appeal. 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

Appellant, a 52-year-old tractor trailer driver, filed a Form CA-1 claim for benefits on December 8, 2010, alleging that he injured his neck and left shoulder on November 29, 2010 when the trailer door jammed, causing him to lunge forward and strike the door.

By letter dated December 10, 2010, OWCP asked appellant to submit additional factual and medical evidence in support of his claim. No response was received.

By decision dated January 26, 2011, OWCP denied appellant's claim, finding that he failed to submit sufficient medical evidence to establish that he sustained neck and left shoulder injuries in the performance of duty on November 29, 2010. This decision was mailed to appellant's address of record.³

On August 29, 2011 OWCP received a request for an oral hearing from appellant.

By decision dated September 28, 2011, OWCP denied appellant's hearing request, finding that it was untimely. It considered his request in its discretion and determined that the issue in his case could equally well be addressed by requesting reconsideration by the district OWCP and submitting evidence not previously considered.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA 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 the issuance of the decision, to a hearing on his claim before a representative of the Secretary.⁴ Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.⁵ 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.⁶ A claimant is entitled to a hearing or review of the written record as a matter of right if the request is filed within 30 days.⁷

³ Under the mailbox rule, it is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. This presumption arises when it appears from the record that the notice was properly addressed and duly mailed. See *Michelle Lagana*, 52 ECAB 187 (2000).

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. § 10.615.

⁶ *Id.* at § 10.616(a).

⁷ *Leona B. Jacobs*, 55 ECAB 753 (2004).

While a claimant may not be entitled to a hearing or review of the written record as a matter of right if the request is untimely, OWCP has the discretionary authority to grant the request and must properly exercise such discretion.⁸

ANALYSIS

OWCP denied appellant's traumatic injury claim by decision dated January 26, 2011. This decision was mailed to appellant's address of record. Appellant filed his request for an oral hearing on August 29, 2011. As his request was not filed within 30 days of the January 26, 2011 decision denying his claim, it was untimely and he was not entitled to an oral hearing as a matter of right.

OWCP exercised its discretionary authority with regard to appellant's request. It notified him that the issue in his claim could be equally well addressed by requesting reconsideration by the district OWCP and submitting evidence not previously considered. The only limitation on OWCP's discretionary authority is reasonableness.⁹ There is no evidence that it abused its discretion by denying appellant's request for a review of the written record.¹⁰ The Board has held that this is a reasonable exercise of OWCP's discretionary authority.¹¹

On appeal appellant argues the merits of his claim. As noted, the Board has no jurisdiction to review the merits of this claim.

CONCLUSION

The Board finds that OWCP did not abuse its discretion in denying appellant's request for an oral hearing.

⁸ See *id.*; *Cora L. Falcon*, 43 ECAB 915 (1992); *Mary B. Moss*; 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

⁹ See *Hubert Jones, Jr.*, 57 ECAB 467, 473 (2006).

¹⁰ See *André Thyratron*, 54 ECAB 257 (2002).

¹¹ See *G.W.*, Docket No. 10-782 (issued April 23, 2010); *D.M.*, Docket No. 08-1814 (issued January 16, 2009); *Steven A. Andersen*, 53 ECAB 367 (2002).

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2012
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