

On appeal, appellant argues the merits of her case.

FACTUAL HISTORY

On January 27, 2006 appellant, then a 49-year-old program support assistant, filed a traumatic injury claim, Form CA-1, alleging that she sustained a neck, right shoulder and arm injury while in the performance of duty on December 30, 2005. Her claim was accepted for right rotator cuff sprain/strain and bilateral rotator cuff syndrome. Appellant was placed on the periodic rolls.

On December 6, 2007 appellant filed a claim for a schedule award.

By decision dated January 9, 2008, OWCP granted appellant's schedule award claim for three percent permanent disability of the right upper extremity for the period October 30, 2007 to January 3, 2008.

On January 17, 2008 appellant requested reconsideration.

By decision dated February 21, 2008, OWCP denied modification of its January 9, 2008 schedule award decision.

On July 10, 2008 appellant filed a claim for an additional schedule award.

By decision dated October 16, 2008, OWCP denied appellant's claim for an additional schedule award.

On November 18, 2008 appellant requested reconsideration for a second time.

By decision dated January 7, 2009, OWCP denied appellant's request for reconsideration on the basis that she did not show that it erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent new evidence not previously considered by it.

By appeal form dated June 22, 2011, postmarked June 23, 2011 and received by OWCP on June 27, 2011, appellant requested an oral telephone hearing before an OWCP hearing representative in connection with her claim.

By decision dated July 13, 2011, OWCP denied appellant's request for a hearing on the grounds that she had previously requested reconsideration. It exercised its discretion and further denied her request on the basis that the issue in the case could equally be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which established that her permanent disability was greater than the amount awarded.

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 or her claim before a representative of the

Secretary.³ OWCP's procedures, which require OWCP to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.⁴ In such a case, it will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁵

ANALYSIS

On June 22, 2011 appellant requested an oral hearing. Because she previously sought reconsideration under section 8128 of FECA, she was not entitled to a hearing as a matter of right under section 8124(b)(1). Appellant previously requested reconsideration on January 17 and November 18, 2008. OWCP denied modification in a merit decision dated February 21, 2008 and denied her request for reconsideration in a nonmerit decision dated January 7, 2009.

OWCP properly exercised its discretion and determined that the issues in the case could be equally raised through a request for reconsideration and the submission of additional evidence. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.⁶ The Board finds that OWCP properly considered the matter in relation to the issues involved. It did not abuse its discretion in denying appellant's request for an oral hearing in its July 13, 2011 decision.⁷

On appeal, appellant argues the merits of her case. The Board only has jurisdiction over the July 13, 2011 decision which denied her request for a hearing and is precluded from conducting a merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing as she previously requested reconsideration.

³ 5 U.S.C. § 8124(b)(1).

⁴ See *Claudio Vasquez*, 52 ECAB 496 (2002).

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

⁶ See *Samuel R. Johnson*, 51 ECAB 612 (2000).

⁷ See also *T.T.*, Docket No. 10-1640 (issued March 18, 2011).

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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