

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

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C.P., Appellant	)	
	)	
and	)	<b>Docket No. 11-1022</b>
	)	<b>Issued: January 11, 2012</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Bolingbrook, IL, Employer	)	
	)	

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<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Appellant, pro se</i>	
<i>Office of the Solicitor, for the Director</i>	

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 22, 2011 appellant filed a timely appeal from a March 2, 2011 decision of the Office of Workers' Compensation Programs (OWCP) denying a hearing. Because more than one year<sup>1</sup> elapsed between the last merit decision dated July 19, 2001 to the filing of the appeal, the Board lacks jurisdiction to review the merits of this case pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.<sup>3</sup>

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<sup>1</sup> For final adverse OWCP decisions issued prior to November 19, 2008, a claimant had up to one year to appeal to the Board. See 20 C.F.R. § 501.3(d)(2). For final adverse OWCP decisions issued on and after November 19, 2008, a claimant has 180 days to file an appeal with the Board. See 20 C.F.R. § 501.3(e).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> Appellant submitted additional medical evidence accompanying her request for appeal. The Board may not consider evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Such evidence may be submitted to OWCP pursuant to a valid request for reconsideration.

## ISSUES

The issue is whether OWCP properly denied a request for an oral hearing.

## FACTUAL HISTORY

OWCP accepted that on July 31, 2000 appellant, then a 48-year-old clerk, sustained sprains and contusions of the right ankle, left knee and left wrist and a lumbar strain, when she caught her right foot on a postal container and fell. Appellant stopped work on August 1, 2000 and received compensation for total disability beginning on September 15, 2000. She did not return to work.

Dr. Antonio P. Carlino, an attending osteopathic physician Board-certified in family practice, held appellant off work as of November 16, 2000. On May 24, 2001 he released her to light-duty work, with occasional lifting up to 20 pounds, frequent lifting up to 10 pounds and frequent changes of position. Dr. Anthony DiGianfilippo, an attending Board-certified neurosurgeon, released appellant to light duty as of June 1, 2001.

On June 6, 2001 the employing establishment offered appellant a job as a modified casual clerk, with lifting limited to 20 pounds occasionally and 10 pounds frequently. Appellant could change positions as needed. Dr. Carlino approved the position on June 4, 2001. In a June 18, 2001 letter, OWCP advised her that the offered position was suitable work and that an unjustified refusal would result in the termination of her wage-loss compensation and schedule award eligibility. Appellant did not accept the offer or return to duty.

By decision dated July 19, 2001, OWCP terminated appellant's wage-loss compensation benefits and schedule award eligibility effective that day under section 8106(c)(2) of FECA<sup>4</sup> on the grounds that she refused an offer of suitable work. Appellant remained entitled to medical benefits.

In a December 5, 2008 letter, appellant requested that OWCP reopen her case. She submitted reports from Dr. DiGianfilippo dated February 13, 2001 to July 28, 2010, describing neck, back and multiple extremity symptoms. On August 9, 2010 appellant claimed a schedule award. She submitted a report from an attending physician finding ratable impairments of the right arm and both legs. In a November 15, 2010 report, OWCP's medical adviser concurred with the physician's assessment. However, in a November 29, 2010 letter, OWCP reminded appellant that she was no longer eligible to receive a schedule award as her compensation was terminated under 5 U.S.C. § 8106(c)(2).

In a letter dated and postmarked December 30, 2010, appellant requested an oral hearing regarding OWCP's July 19, 2001 decision. She contended that the employing establishment never offered her a job. Appellant submitted a December 8, 2010 report from Dr. DiGianfilippo finding her totally disabled for work.

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<sup>4</sup> 5 U.S.C. § 8106(c)(2).

By decision dated March 2, 2011, OWCP denied appellant's request for a hearing on the grounds that it was not timely filed. It found that her request for a hearing was postmarked on December 30, 2010, more than 30 days after issuance of the July 19, 2001 decision. OWCP additionally denied appellant's request for a hearing on the grounds that the issues involved could be addressed equally well by submitting new, relevant evidence pursuant to a valid request for reconsideration.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA states unequivocally that a claimant not satisfied with a decision of OWCP has a right, upon timely request, to a hearing before an OWCP representative.<sup>5</sup> Section 10.615 of Title 20 of the Code of Federal Regulations provide that a hearing is a review of an adverse decision by an OWCP hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record.<sup>6</sup>

A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark or other carrier's date marking of the request.<sup>7</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>8</sup> In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.<sup>9</sup>

### **ANALYSIS**

On July 19, 2001 OWCP terminated appellant's wage-loss compensation benefits and schedule award eligibility as she refused an offer of suitable work. Appellant had 30 days from the date of that decision, or until August 20, 2001, to make a timely request for a hearing.<sup>10</sup> Her letter requesting a review of the written record was postmarked on December 30, 2010. Therefore, the Board finds that the letter requesting a review of the written record was not timely.<sup>11</sup>

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<sup>5</sup> 5 U.S.C. § 8124 (b)(1). *See A.B.*, 58 ECAB 546 (2007); *Joe Brewer*, 48 ECAB 411 (1997).

<sup>6</sup> 20 C.F.R. § 10.615.

<sup>7</sup> *Id.* at § 10.616(a).

<sup>8</sup> *See also Herbert C. Holley*, 33 ECAB 140 (1981); *G.W.*, Docket No. 10-782 (issued April 23, 2010).

<sup>9</sup> *Id.* *See also Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>10</sup> The thirtieth day from July 19, 2001 was Saturday, August 18, 2001. The Board has held that, in computing a time period, the date of the event from which the designated period of time begins to run shall not be included while the last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday. *John B. Montoya*, 43 ECAB 1148 (1992). As August 18, 2001 was a Saturday, the first regular business day afterward was Monday, August 20, 2001.

<sup>11</sup> 20 C.F.R. § 10.616(a); *N.M.*, 59 ECAB 511 (2008).

Because her request was untimely, the Board finds that OWCP properly found that appellant was not entitled to a hearing as a matter of statutory 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 address any issues in her case equally well by requesting reconsideration. Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP's July 19, 2011 decision, the Board finds that it did not abuse its discretion in denying appellant's untimely request for an oral hearing.<sup>12</sup>

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 2, 2011 is affirmed.

Issued: January 11, 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

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<sup>12</sup> See *Herbert Jones, Jr.*, 57 ECAB 467 (2006).