

FACTUAL HISTORY

OWCP accepted that on September 2, 2008 appellant, then a 61-year-old recreation aid, sustained a left shoulder and upper arm sprain as a result of lifting heavy materials during the construction of a storage shed. He stopped work and returned to full-time light duty on November 22, 2008.

Appellant submitted a request for disability compensation for the period October 25 to November 19, 2008. He submitted medical reports from Rudy M. Garcia, a family practitioner, and Lee M. Goldman, a Board-certified family practitioner, dated from October 15, 2008 to December 17, 2009, as well as hospital records.

In a decision dated April 2, 2010, OWCP denied appellant's claim for disability compensation finding that the medical evidence failed to establish that he was disabled for work due to the accepted September 2, 2008 work injury.

In a form postmarked March 31, 2011 and received by OWCP on April 5, 2011, appellant requested an oral hearing. He provided a December 16, 2008 medical report by Mr. Garcia and resubmitted several other progress reports.

By decision dated June 2, 2011, OWCP denied appellant's request for an oral hearing on the grounds that it was not timely filed. It found that his hearing request was postmarked March 31, 2011, more than 30 days since the last OWCP decision was issued on April 2, 2010. OWCP exercised its discretion by considering appellant's hearing request and further denied it as the issues involved could be addressed equally well pursuant to a valid request for reconsideration and submitting evidence not previously considered to support his claim.

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.³ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁴ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.⁵ Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.⁶ OWCP procedures require that it

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. §§ 10.616, 10.617.

⁵ *Id.* at § 10.616(a).

⁶ *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).⁷

ANALYSIS

On April 2, 2010 OWCP denied appellant's request for disability compensation. Appellant requested an oral hearing in an appeal form dated March 29, 2011 and postmarked March 31, 2011. It determined that his request was made more than 30 days after the date of issuance of OWCP's April 2, 2010 decision.

The Board finds that appellant was not entitled to a hearing as a matter of statutory right under section 8124(b)(1) of FECA. The Board notes that appellant did not submit a written request for an oral hearing by May 3, 2010, 30-calendar days after OWCP's April 2, 2010 decision. Because his request was postmarked March 31, 2011, his request was untimely.

Although appellant's request for a review of the written record was untimely, OWCP has the discretionary authority to grant the request and it must exercise such discretion. In its June 2, 2011 decision, it properly exercised its discretion by notifying appellant that it had considered the matter in relation to the issue involved and indicated that additional argument and evidence could be submitted with a request for reconsideration. 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, a clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.⁸ The evidence of record does not establish that OWCP abused its discretion in its denial of appellant's request for an oral hearing. On appeal, appellant asserts that the medical evidence demonstrated that he remained off work until November 19, 2008 as a result of his accepted right shoulder sprain injury. As stated, however, the Board does not have jurisdiction over the disability compensation issue on the present appeal.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely.⁹

⁷ See *R.T.*, Docket No. 08-408 (issued December 16, 2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.2(a) (October 2011).

⁸ *Samuel R. Johnson*, 51 ECAB 612 (2000).

⁹ The Board notes that appellant submitted additional evidence following the June 2, 2011 nonmerit decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

ORDER

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

Issued: June 4, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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