



## **FACTUAL HISTORY**

On January 6, 2011 appellant, then a 41-year-old patrol private, filed a traumatic injury claim, alleging he sustained injuries that day to his back and lower back area. He was sitting in the front passenger seat of a police cruiser during a traffic stop when he was rear ended by a vehicle while in the performance of duty. Appellant stopped work on January 7, 2011 and returned to work that day.

By letter dated January 28, 2011, OWCP informed appellant of the evidence needed to support his claim. It requested that he submit additional evidence within 30 days. No additional evidence was received.

By decision dated March 4, 2011, OWCP denied appellant's claim. It found that he did not submit any medical evidence to establish a medical diagnosis in connection with the alleged incident.

In a letter postmarked on June 2, 2011, appellant requested a hearing.

In a decision dated June 29, 2011, OWCP found that appellant was not entitled to a hearing as a matter of right as his request was not made within 30 days of issuance of the March 4, 2011 decision. It exercised its discretion and determined that it would not grant a hearing for the reason that the issue in the case could equally well be addressed by requesting reconsideration and submitting new evidence not previously considered pertaining to his claim for an injury in the performance of duty.

## **LEGAL PRECEDENT**

Section 8124 of FECA provides that a claimant is entitled to a hearing before an OWCP representative when a request is made within 30 days after issuance of an OWCP final decision.<sup>3</sup> 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."<sup>4</sup>

Section 10.616(a) of Title 20 of the Code of Federal Regulations further provide, "A claimant, injured on or after July 4, 1966, who has received a final adverse decision by the district OWCP may obtain a hearing by writing to the address specified in the decision. 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."<sup>5</sup>

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<sup>3</sup> 5 U.S.C. § 8124(b)(1).

<sup>4</sup> 20 C.F.R. § 10.615.

<sup>5</sup> *Id.* at § 10.616(a).

OWCP's regulations provide that a request received more than 30 days after OWCP's decision is subject to OWCP's discretion<sup>6</sup> and the Board has held that OWCP must exercise this discretion when a hearing request is untimely.<sup>7</sup>

### **ANALYSIS**

Appellant requested a hearing on June 2, 2011. The Board notes that the request for a hearing was more than 30 days after OWCP issued its March 4, 2011 decision. Appellant was not entitled to a hearing as a matter of right.

OWCP properly exercised its discretion in denying a hearing upon appellant's untimely request by determining that the issue could be equally well addressed by requesting reconsideration and submitting new evidence. The only limitation on OWCP's authority is reasonableness. Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to logic and deductions from known facts.<sup>8</sup> There is no evidence of record that OWCP abused its discretion by denying appellant's request for a hearing under these circumstances.

On appeal, appellant alleged that OWCP made errors with regard to his date of injury. He referred to the date of May 5, 2010. The Board notes it only has jurisdiction over whether OWCP properly denied appellant's request for a hearing. Appellant also submitted additional evidence. However, the Board's jurisdiction is limited to reviewing the evidence of record that was before OWCP at the time of its final decision. The additional evidence cannot be considered for the first time by the Board.<sup>9</sup>

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for a hearing.

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<sup>6</sup> *Id.* at § 10.616(b).

<sup>7</sup> *Samuel R. Johnson*, 51 ECAB 612 (2000).

<sup>8</sup> *See Daniel J. Perea*, 42 ECAB 214 (1990). There is no evidence of record that OWCP abused its discretion in denying appellant's request for a hearing under these circumstances.

<sup>9</sup> 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 29, 2011 decision of the Office Workers' Compensation Programs is affirmed.

Issued: June 5, 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