



## **FACTUAL HISTORY**

On August 9, 2010 appellant, then a 50-year-old fuel compliance officer, filed a traumatic injury claim alleging that on August 6, 2010 she sustained neck, shoulder and arm pain as a result of an automobile accident while in the performance of duty.

Appellant submitted an August 13, 2010 disability slip releasing her to full-duty work on August 23, 2010; a copy of the traffic crash report; and an undated authorization for examination and/or treatment (Form CA-16) from Dr. Nilofar Khan, a treating Board-certified internist, who reported first seeing appellant on August 6, 2010 and diagnosed a muscle sprain.

By correspondence dated August 24, 2010, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the additional medical and factual evidence to submit within 30 days.

In response to OWCP's letter, appellant submitted disability notes dated August 20 and September 3, 2010 from Dr. Khan who noted that she was disabled from work for the period August 20 to September 10, 2010.

By decision dated September 27, 2010, OWCP denied appellant's claim finding that she failed to establish fact of injury. It found that she failed to submit any medical evidence diagnosing a medical condition as a result of the August 6, 2010 automobile accident.

On November 22, 2010 appellant requested an oral hearing before an OWCP hearing representative. Accompanying her request was an August 7, 2010 medical report from the Henry Ford Health System noting the automobile accident and diagnosing multiple contusions.<sup>2</sup>

By decision dated February 11, 2011, OWCP's Branch of Hearings and Review denied appellant's hearing request as untimely filed. OWCP considered the request and determined that her case could equally well be addressed by requesting reconsideration and submitting new evidence.

## **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides that a claimant is entitled to a hearing before an OWCP representative as a matter of right when a request is made within 30 days after issuance of the original final OWCP decision.<sup>3</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 of the request.<sup>4</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-

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<sup>2</sup> The form lacks any signature or identification as to who prepared the report.

<sup>3</sup> 5 U.S.C. § 8124(b)(1). See *A.B.*, 58 ECAB 546 (2007); *Gerard F. Workinger*, 56 ECAB 259 (2005).

<sup>4</sup> 20 C.F.R. § 10.616(b).

day period.<sup>5</sup> In such a case, it will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.<sup>6</sup>

### ANALYSIS

A request for a hearing must, as noted above, be made within 30 days after the date of the issuance of OWCP's original final decision. Appellant requested an oral hearing before OWCP's Branch of Hearings and Review on November 22, 2010. As the request was submitted more than 30 days following issuance of the September 27, 2010 OWCP decision, it was untimely filed and she was not entitled to an oral hearing as a matter of right.

OWCP also has the discretionary power to grant an oral hearing when a claimant is not entitled to an oral hearing as a matter of right. The Board finds that OWCP, in its February 11, 2011 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request for an oral hearing on the basis that her claim could be addressed through a reconsideration application. The Board has held that as the only limitation on OWCP's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.<sup>7</sup> In the present case, the evidence of record does not indicate that OWCP committed any abuse of discretion in connection with its denial of appellant's request for an oral hearing which could be found to be an abuse of discretion.

On appeal, appellant contends that as a result of the August 6, 2010 employment injury she was disabled due to the pain in her neck, left shoulder, back and knee area. She noted that her physician diagnosed multiple contusions. As noted above, the Board lacks jurisdiction to review the merits of appellant's claim. In this appeal, the only final decision under review was the February 11, 2011 nonmerit denial of a hearing. For the reasons noted above, the Board must affirm the February 11, 2011 decision based on the evidence of record.

### CONCLUSION

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

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<sup>5</sup> *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

<sup>6</sup> *Teresa M. Valle*, 57 ECAB 542 (2006).

<sup>7</sup> *Id.*; *Daniel J. Perea*, 42 ECAB 214 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 11, 2011 is affirmed.

Issued: March 12, 2011  
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