

FACTUAL HISTORY

On August 6, 2008 appellant, then a 56-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on July 30, 2008 she sustained a left jaw and lower back injury when she was struck on the left side of her face by a patient when attempting to place him in mitten restraints. OWCP accepted the claim for aggravation of cervical sprain and facial contusions.

Appellant submitted a claim for compensation Form CA-7 documenting leave without pay for the period December 14 to 18, 2009. She also submitted a claim for compensation Form CA-7 documenting leave without pay for the period December 19, 2009 to January 3, 2010. In support of her claim, appellant submitted medical reports dated August 5, 2008 to March 8, 2010 addressing her treatment.

In a February 25, 2010 medical report, Dr. Dewey H. Jones, a Board-certified orthopedic surgeon, reported that appellant continued to have pain from a back injury that occurred in 2008 when she had to tackle a patient. He stated that her injury probably aggravated the degenerative processes which may not have been symptomatic because she did not have any significant problems with her back before her 2008 injury.

By decision dated April 22, 2010, OWCP denied appellant's claim for compensation for the period December 19, 2009 to January 3, 2010.³ It noted that Dr. Jones' February 25, 2010 medical report indicated that appellant may have sustained an aggravation of the lumbar degenerative disc disease but he did not provide medical rationale to support disability for the period December 19, 2009 to January 3, 2010.

Appellant submitted various medical reports and physical therapy notes dated December 22, 2009 to September 20, 2011. On July 14, 2011 she refiled a Form CA-7 for leave without pay for the period December 19, 2009 to January 3, 2010. Appellant also filed a claim for a schedule award.

By letter dated July 18, 2011, OWCP informed appellant that it had received her July 14, 2011 Form CA-7 but had already issued a decision on April 22, 2010 denying her claim. It noted that appeal rights were provided with that decision and attached a copy of those appeal rights.

On August 8, 2011 appellant requested an oral hearing before the Branch of Hearings and Review of the April 22, 2010 OWCP decision. She stated that she was placed on early disability retirement as of August 25, 2010 due to aggravation of her degenerative disc disease from her July 30, 2008 traumatic injury and submitted various treatment notes in support of her claim.

By decision dated September 26, 2011, the Branch of Hearings and Review denied appellant's request for an oral hearing finding that her request was not made within 30 days of the April 22, 2010 OWCP decision. The Branch of Hearings and Review further determined that the issue in the case could equally well be addressed by requesting reconsideration from OWCP

³ On January 12, 2012 OWCP denied appellant's claim for compensation for the period December 14 to 18, 2009.

and submitting evidence not previously considered which establishes that she is entitled to the claimed wage-loss compensation benefits.⁴

LEGAL PRECEDENT

A claimant for compensation not satisfied with a decision by OWCP 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.⁵ According to 20 C.F.R. § 10.615, a claimant shall be afforded a choice of an oral hearing or a review of the written record.⁶ The regulations provide that a request for a hearing or review of the written record must be made within 30 days as determined by the postmark or other carrier's date marking, of the date of the decision.⁷ A claimant is not entitled to a hearing or a review of the written record as a matter of right if the request is not made within 30 days of the date of the OWCP decision.⁸ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.⁹ In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.¹⁰

ANALYSIS

Appellant requested an oral hearing on August 8, 2011. Her request was made more than 30 days after the date of issuance of OWCP's April 22, 2010 decision. Therefore, OWCP properly found in its September 26, 2011 decision that appellant was not entitled to an oral hearing as a matter of right because her request for an oral hearing was not made within 30 days of its April 22, 2010 decision.¹¹

Appellant submitted medical documents after OWCP's April 22, 2010 merit decision. However, she did not submit a written request for an oral hearing by May 22, 2010, 30-calendar days from OWCP's April 22, 2010 decision. Because appellant's request was postmarked April 8, 2011, it is untimely.

⁴ The Board notes that appellant submitted additional evidence after OWCP rendered its September 26, 2011 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

⁵ 5 U.S.C. § 8124(b)(1).

⁶ 20 C.F.R. § 10.615.

⁷ *Id.* at § 10.616(a).

⁸ See *James Smith*, 53 ECAB 188 (2001).

⁹ *Herbert C. Holley*, 33 ECAB 140 (1981).

¹⁰ *Id.*

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602 (May 1991).

Although appellant's request for oral hearing was untimely, OWCP has the discretionary authority with respect to granting the request and it must exercise such discretion.¹² In its September 26, 2011 decision, it properly exercised its discretion by stating that it had considered the matter and had denied appellant's request for an oral hearing because the issue regarding wage-loss compensation could be addressed through a reconsideration application. 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, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.¹³ In this case, the evidence of record does not indicate that OWCP abused its discretion in its denial of appellant's request for an oral hearing.

On appeal, appellant contends that she has provided extensive documentation and proof to establish her claim for compensation for the period December 19, 2009 to January 3, 2010. As noted, the Board does not have jurisdiction over the merits of this case and therefore will not review evidence submitted by appellant.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the January 12, 2012 merit decision, pursuant to 5 U.S.C. § 8128(a)

CONCLUSION

The Board finds that OWCP properly denied appellant's August 8, 2011 request for an oral hearing.

¹² See *Cora L. Falcon*, 43 ECAB 915 (1992).

¹³ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 26, 2011 is affirmed.

Issued: May 23, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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