



On appeal, appellant asserts that a position offered to her in 2001 was not suitable work. She also contends that she was not made aware of the job offer OWCP found that she refused.

### **FACTUAL HISTORY**

This is the second appeal before the Board in this case. By decision and order issued January 11, 2012,<sup>3</sup> the Board affirmed OWCP's March 2, 2011 nonmerit decision denying appellant's request for a hearing on the grounds that the request was not filed within 30 days of July 19, 2001, the date of the most recent merit decision in the case. The July 19, 2001 decision terminated appellant's wage-loss compensation benefits and schedule award eligibility on the grounds that she refused an offer of suitable work. The law and facts of the case as set forth in the Board's prior decision and order are incorporated by reference.<sup>4</sup>

In an undated letter received by OWCP's Branch of Hearings and Review on March 7, 2012, appellant requested a "third review."<sup>5</sup> She contended that she did not refuse an offer of suitable work. Appellant submitted employing establishment job applicant drug testing information, state unemployment documents and copies of evidence previously of record. She also provided a March 7, 2012 report from Dr. diGianfilippo, finding appellant's condition unchanged.

By decision dated March 14, 2012, OWCP denied appellant's request for a hearing on the grounds that it was not timely filed within 30 days of the July 19, 2001 decision. It exercised its discretion by performing a limited review of the evidence and further denied appellant's request as the issue in the case could be addressed equally well 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>6</sup> Section 10.615 of Title 20 of the Code of Federal Regulations provides 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>7</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

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<sup>3</sup> Docket No. 11-1022 (issued January 11, 2012).

<sup>4</sup> During the pendency of the prior appeal, appellant submitted chart notes dated from December 9, 2010 to July 13, 2011 from Dr. Anthony diGianfilippo, an attending Board-certified neurosurgeon.

<sup>5</sup> On its face, appellant addressed the Board, referencing the January 11, 2012 decision and order. However, she mailed the letter to OWCP's Branch of Hearings and Review. Therefore, OWCP interpreted appellant's letter as a request for a hearing before OWCP's Branch of Hearings and Review.

<sup>6</sup> 5 U.S.C. § 8124 (b)(1). *See A.B.*, 58 ECAB 546 (2007); *Joe Brewer*, 48 ECAB 411 (1997).

<sup>7</sup> 20 C.F.R. § 10.615.

the request.<sup>8</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>9</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>10</sup>

### ANALYSIS

OWCP accepted that appellant sustained traumatic right ankle, left knee and left wrist injuries and a lumbar strain when she tripped and fell on July 31, 2000. Appellant stopped work on the date of injury and did not return. Pursuant to the first appeal, OWCP found that she failed to respond to the employing establishment's July 6, 2001 job offer, a position approved by her attending physician. It terminated appellant's wage-loss compensation benefits and schedule award eligibility by decision dated July 19, 2001. Appellant had 30 days from the date of that decision to make a timely request for a hearing. Pursuant to the present appeal, her letter requesting an oral hearing was received by OWCP on March 7, 2012, after the 30-day time period has elapsed. Although the postmark was not retained, the letter references the Board's January 11, 2012 decision. This establishes that the letter was mailed more than 30 days after July 19, 2001. Thus, OWCP properly found that appellant's request for an oral hearing was not timely filed under section 8124(b)(1) of FECA and that she was not entitled to a hearing as a matter of right.

OWCP then exercised its discretion and denied appellant's request for a hearing on the additional grounds that she could address the refusal of suitable work issue in her case equally well by submitting relevant evidence accompanying a valid request for reconsideration. Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP's July 19, 2001 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for an oral hearing.<sup>11</sup>

On appeal, appellant asserts that a position offered to her in 2001 was not suitable work. She also contends that the employing establishment did not make her aware of the position that she was found to have refused. As stated above, the Board does not have jurisdiction over the merits of the case on the present appeal.

### CONCLUSION

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

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<sup>8</sup> *Id.* at § 10.616(a).

<sup>9</sup> *G.W.*, Docket No. 10-782 (issued April 23, 2010). *See also Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>10</sup> *Id.* *See also Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>11</sup> *See Gerard F. Workinger*, 56 ECAB 259 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 14, 2012 is affirmed.

Issued: September 21, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board