

FACTUAL HISTORY

Appellant, a 54-year-old licensed practical nurse (LPN), has an accepted occupational disease claim for right bicipital tenosynovitis which arose on or about February 22, 2001, an accepted traumatic injury claim for neck sprain and right rotator cuff sprain which occurred on June 12, 2008 and an accepted right rotator cuff sprain and right shoulder primary osteoarthritis which occurred on April 8, 2009. With respect to the April 2009 injury, she received a schedule award for 12 percent impairment of the right upper extremity.² OWCP combined the case records of appellant's three right upper extremity injuries and designated the February 2001 injury as the master file.

Appellant resigned effective January 6, 2012. Prior to her resignation, she was not performing her date-of-injury job. Appellant had accepted a permanent job offer on September 30, 2011 with retained pay. Her position title at the time of her January 6, 2012 resignation was "Health Technician." Appellant subsequently filed a claim (Form CA-7) for wage-loss compensation beginning January 9, 2012. OWCP developed the claim as a recurrence of disability and advised her of the type of evidence necessary to establish entitlement to wage-loss compensation.

By decision dated September 7, 2012, OWCP denied appellant's claimed recurrence of disability as she had failed to demonstrate that her disability beginning January 9, 2012 was causally related to her employment injuries.

On October 12, 2012 appellant, through counsel, requested an oral hearing.

In a decision dated December 31, 2012, the Branch of Hearings and Review denied appellant's request for a hearing as untimely filed. The hearing representative also denied a discretionary hearing noting that appellant could instead file a request for reconsideration with OWCP.

LEGAL PRECEDENT

Any claimant dissatisfied with an OWCP decision shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought.³ If the request is not made within 30 days, a claimant is not entitled to a hearing or a review of the written record as a matter of right. OWCP regulations further provide that the "claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision."⁴ Although a

² The June 22, 2011 schedule award covered a period of 37.44 weeks from May 24, 2011 to February 10, 2012.

³ 20 C.F.R. § 10.616(a).

⁴ *Id.*

claimant may not be entitled to a hearing as a matter of right, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing.⁵

ANALYSIS

Appellant requested a hearing utilizing the appeal request form that accompanied the September 7, 2012 decision. The form is signed and dated October 12, 2012. Appellant's counsel submitted the hearing request under cover letter dated October 12, 2012. As noted, OWCP issued its decision on September 7, 2012, which was more than 30 days prior to her October 12, 2012 hearing request. The regulations clearly specify that "[t]he hearing request must be sent within 30 days ... of the date of the decision for which a hearing is sought."⁶ Appellant's October 12, 2012 request was untimely and, therefore, she was not entitled to a hearing as a matter of right. The Branch of Hearings and Review also denied her request on the basis that her claim for wage-loss compensation beginning January 9, 2012 could be addressed by requesting reconsideration before OWCP. The Board finds that the hearing representative properly exercised her discretionary authority in denying appellant's request for a hearing.⁷

CONCLUSION

The hearing representative properly denied appellant's October 12, 2012 request for a hearing.

⁵ 5 U.S.C. §§ 8124(b)(1) and 8128(a); *Hubert Jones, Jr.*, 57 ECAB 467, 472-73 (2006); *Herbert C. Holley*, 33 ECAB 140 (1981).

⁶ 20 C.F.R. § 10.616(a).

⁷ *Mary B. Moss*, 40 ECAB 640, 647 (1989).

ORDER

IT IS HEREBY ORDERED THAT the December 31, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board