

ISSUE

The issue is whether OWCP abused its discretion by denying a request for an oral hearing under 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On October 12, 2005 appellant, then a 60-year-old regular mail handler, twisted his left knee in the performance of duty. He did not stop work. OWCP accepted the claim for left knee strain and paid benefits.⁴ At a second opinion evaluation by a Board-certified orthopedic surgeon on September 18, 2007, it was noted that appellant had degenerative changes in the knee that were age related and not related to the accepted injury of October 12, 2005. Appellant returned to limited duties with restrictions of no extended walking, standing or carrying over 10 pounds.

By decision dated February 10, 2011, OWCP denied appellant's claim for disability compensation for the period commencing February 17 to 26, 2010. It found that the weight of the medical evidence did not establish that the degenerative changes in his knee were caused or a consequence of the October 12, 2005 knee injury.

On December 23, 2012 appellant requested an oral hearing. The request was postmarked December 26, 2012. Several medical reports were submitted.

By decision dated January 11, 2013, OWCP's Branch of Hearings and Review denied appellant's request for a hearing. It found that the request was not timely filed within 30 days of the February 10, 2011 decision. OWCP exercised its discretion by performing a limited review of the evidence and further denied his request as the issue in the case could be equally well addressed pursuant to a request for reconsideration and the submission of evidence not previously considered.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that a claimant not satisfied with a decision of OWCP has a right, upon timely request, to a hearing before an OWCP representative.⁵ Section 10.615 of Title 20 of the Code of Federal Regulations provide 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.⁶

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

⁴ Appellant's claim was originally accepted as a simple, uncontroverted case which resulted in minimal or no time loss from work; however, the case was formally adjudicated when medical expenses exceeded \$1,500.00.

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

⁶ 20 C.F.R. § 10.615.

the request.⁷ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.⁸ In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.⁹

ANALYSIS

OWCP accepted that appellant sustained a left knee strain and paid benefits. By decision dated February 10, 2011, it denied his claim for disability compensation from February 17 to 26, 2010. OWCP did not accept that the degenerative changes in appellant's knee was caused or causally related to the October 12, 2005 work injury. Appellant requested an oral hearing in a letter dated December 23, 2012 and postmarked December 26, 2012. OWCP denied his request by decision dated January 11, 2013 on the grounds that the request was filed more than 30 days after OWCP's February 10, 2011 decision.

Appellant's letter requesting an oral hearing was postmarked on December 26, 2012, more than 30 days after issuance of the February 10, 2011 decision. The Board finds that OWCP properly found that his request for an oral hearing was not timely filed under section 8124 (b)(1) of FECA and that he was not entitled to a hearing as a matter of right.

OWCP properly exercised its discretion and denied appellant's request for a hearing on the additional grounds that he could address the issue in his case by submitting evidence not previously considered accompanying a request for reconsideration. Reconsideration exists as an alternative right to seek review of the issues in his case. The Board finds that OWCP exercised its discretion in this case and found that appellant's right to further proceedings could be equally well addressed by requesting reconsideration.¹⁰

On appeal, appellant argues the merits of his case. As noted, the Board does not have jurisdiction over the merits of this appeal. Appellant also submitted new evidence on appeal; but the Board may only review evidence that was in the record at the time OWCP issued its final decision.¹¹

CONCLUSION

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

⁷ *Id.* at § 10.616(a).

⁸ *G.W.*, Docket No. 10-782 (issued April 23, 2010). *See also Herbert C. Holley*, 33 ECAB 140 (1981).

⁹ *Id.* *See also Rudolph Bermann*, 26 ECAB 354 (1975).

¹⁰ *See Gerard F. Worker*, 56 ECAB 259 (2005). *See also André Thyratron*, 54 ECAB 257 (2002).

¹¹ *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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