



## **FACTUAL HISTORY**

This case has previously been before the Board. In a May 2, 2005 decision,<sup>2</sup> the Board affirmed OWCP decisions dated October 30, 2003 and June 10, 2004, denying appellant's claim for compensation for total disability commencing August 26, 2003 due to her accepted August 25, 2003 employment injury. In a May 3, 2010 decision,<sup>3</sup> the Board affirmed OWCP decisions dated December 10, 2008 and April 9, 2009, denying her claim for compensation for total disability for the stated period and request for merit review, respectively. The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference.<sup>4</sup>

By letter dated April 14, 2011, OWCP expanded appellant's claim to include acceptance of prolonged depressive reaction.

On June 2, 2011 appellant filed a claim for wage-loss compensation commencing October 12, 2003. In a December 5, 2011 decision, OWCP denied her claim as the medical evidence did not support that her total disability was causally related to the accepted August 25, 2003 employment injury.

On December 16, 2011 appellant requested a review of the written record by an OWCP hearing representative.

In a March 15, 2012 decision, an OWCP hearing representative set aside the December 5, 2011 decision and remanded the case for further development. He directed OWCP to determine whether appellant sustained an additional lumbar condition causally related to the August 25, 2003 employment incident. Following this action, it was directed to clarify the period of total disability secondary to the accepted employment-related injuries.

On June 25, 2012 OWCP expanded appellant's claim to include acceptance of displacement of the lumbar intervertebral disc without myelopathy.

In an August 20, 2012 decision, OWCP denied appellant's claim for wage-loss compensation commencing August 26, 2003. The medical evidence was found insufficient to establish that she was totally disabled due to the accepted August 25, 2003 employment injuries.

In an appeal request form dated and postmarked November 20, 2012, appellant requested an oral hearing before an OWCP hearing representative and submitted medical evidence which addressed her right hip, knee and leg and back, neck, shoulder, gluteus, feet and emotional conditions, and medical treatment.

In a January 22, 2013 decision, OWCP's Branch of Hearings and Review denied appellant's request for an oral hearing, finding that it was untimely filed. It further denied the request on the grounds that the issue could equally well be addressed by requesting reconsideration from the district office and submitting evidence not previously considered which

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<sup>2</sup> Docket No. 04-2235 (issued May 2, 2005).

<sup>3</sup> Docket No. 09-1525 (issued May 3, 2010).

<sup>4</sup> OWCP accepted that on August 25, 2003 appellant, then a 31-year-old transportation security screener, sustained a lumbar strain while in the performance of duty.

established that she was entitled to ongoing disability compensation benefits beginning October 12, 2003.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on her claim before a representative of the Secretary.<sup>5</sup> Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.<sup>6</sup> The request must be sent to the address specified in the decision within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.<sup>7</sup> A claimant is entitled to a hearing or review of the written record as a matter of right if the request is filed within 30 days.<sup>8</sup>

Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.<sup>9</sup> Its procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).<sup>10</sup>

### **ANALYSIS**

The record shows that the last merit decision issued by OWCP was rendered on August 20, 2012. In that decision, OWCP denied appellant's claim for wage-loss compensation commencing August 26, 2003. Appellant's request for a hearing before an OWCP hearing representative was dated and postmarked November 20, 2012, more than 30 days after the August 20, 2012 decision. The Board finds, therefore, that her hearing request was not timely and she was not entitled to an oral hearing as a matter of right.<sup>11</sup>

OWCP has the discretionary authority to grant a hearing even though a claimant is not entitled as a matter of right. In its January 22, 2013 decision, OWCP properly exercised its discretion. It considered the issue and denied appellant's request for an oral hearing on the basis that her claim on the issue of whether she was entitled to wage-loss compensation benefits could be adequately addressed through the reconsideration process and the submission of additional evidence not previously considered. The Board has held that the only limitation on OWCP's authority is reasonableness. Abuse of discretion is generally shown through proof of manifest

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<sup>5</sup> 5 U.S.C. § 8124(b)(1).

<sup>6</sup> 20 C.F.R. § 10.615.

<sup>7</sup> *Id.* at § 10.616(a).

<sup>8</sup> *Leona B. Jacobs*, 55 ECAB 753 (2004).

<sup>9</sup> *See id.*; *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>10</sup> *See R.T.*, Docket No. 08-408 (issued December 16, 2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.2(a) (October 2011).

<sup>11</sup> 20 C.F.R. § 10.616(a).

error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.<sup>12</sup> The Board finds that in this case, OWCP did not abuse its discretion in denying appellant's request for an oral hearing in its January 22, 2013 decision.

On appeal, appellant asserted that OWCP did not follow its procedures in denying her request for an oral hearing. As found above, OWCP properly followed its procedures and denied her request for an oral hearing as untimely in its January 22, 2013 decision.

Appellant also argued the merits of her case and stated that OWCP did not consider the weight of its own physician's medical opinion which was sufficient to establish her entitlement to compensation. However, as noted above, the Board does not have jurisdiction over the merits of this case.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>12</sup> *Teresa M. Valle*, 57 ECAB 542 (2006); *Daniel J. Perea*, 42 ECAB 214 (1990).