

FACTUAL HISTORY

On April 20, 2009 appellant, then a 49-year-old rural carrier, filed an emotional condition claim alleging that on April 20, 2009 he felt stressed and unwell after a disagreement with the postmaster for refusing to move a car. He stopped work and returned on April 21, 2009.

In a decision dated June 11, 2009, OWCP denied appellant's claim finding insufficient factual evidence to establish that the April 20, 2009 incident occurred, as alleged. It also found insufficient medical evidence to establish that he sustained a diagnosed condition as a result of the alleged incident.

By appeal form dated July 10, 2009, postmarked July 14, 2009, appellant disagreed with the June 11, 2009 denial decision and requested an oral hearing. He described the April 20, 2009 incident and noted that he completed paperwork and handed the forms to his postmaster but had not heard back regarding the matter.

By decision dated September 26, 2012, OWCP's hearing representative denied appellant's request for a hearing as untimely filed. He found that the request for an oral hearing was postmarked July 14, 2009, which was more than 30 days after the June 11, 2009 decision. The hearing representative exercised his discretion and determined that the issue in the case could be equally well addressed by appellant requesting reconsideration before OWCP and submitting evidence not previously considered.

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 his or her claim before a representative of the Secretary.³ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁴ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.⁵ 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.⁶ OWCP procedures require that it

³ *Id.* at § 8124(b)(1).

⁴ 20 C.F.R. §§ 10.616, 10.617.

⁵ *Id.* at § 10.616(a).

⁶ *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).⁷

ANALYSIS

On June 11, 2009 OWCP denied appellant's emotional condition claim. Appellant requested an oral hearing in an appeal form dated July 10, 2009 and postmarked July 14, 2009. The Board notes that his request for an oral hearing was submitted more than 30 days after the June 11, 2009 decision.⁸ Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.⁹ The Board finds that OWCP's hearing representative properly determined that appellant's request for an oral hearing was not timely and, thus, he was not entitled to a hearing as a matter of right under section 8124(b)(1) of FECA.

Although appellant's request for a hearing was untimely, OWCP has the discretionary authority to grant the request and it must exercise such discretion. In the September 27, 2012 decision, OWCP's hearing representative properly exercised his discretion by notifying appellant that it had considered the matter in relation to the issue involved and indicated that additional argument and evidence could be submitted to OWCP with a request for reconsideration. 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, a clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.¹⁰ In this case, there is no evidence of record that the hearing representative abused his discretion in denying appellant's hearing request. Accordingly, the Board finds that OWCP properly denied appellant's request for an oral hearing.

CONCLUSION

The Board also finds that OWCP properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1).

⁷ 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).

⁸ The 30-day period for determining the timeliness of an employee's request for an oral hearing or review commences the day after the issuance of OWCP's decision. See *Donna A. Christley*, 41 ECAB 90 (1989). The Board notes that appellant did not submit a written request for an oral hearing by July 11, 2009, within 30 calendar days after OWCP's June 11, 2009 decision.

⁹ *William F. Osborne*, 46 ECAB 198 (1994).

¹⁰ *Samuel R. Johnson*, 51 ECAB 612 (2000).

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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