

**United States Department of Labor
Employees' Compensation Appeals Board**

F.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Francisco, CA, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 13-557
Issued: June 17, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 15, 2013 appellant filed a timely appeal from a December 6, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, as more than 180 days has elapsed between the last merit decision, May 18, 2012, and the filing of this appeal on January 15, 2013, the Board lacks jurisdiction to review the merits of this case.²

ISSUE

The issue is whether OWCP abused its discretion to deny appellant's request for an oral hearing.

¹ 5 U.S.C. § 8101 *et seq.*

² For decisions issued prior to November 19, 2008, a claimant had up to one year to file an appeal. An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

On February 7, 1997 appellant, then a 36-year-old mail carrier, filed an occupational disease claim alleging that he sustained injury to his neck as a result of casing and carrying mail. OWCP accepted the claim for neck strain on April 18, 1997.

By letter dated November 8, 2011, appellant requested that his claim be reopened due to a need for additional medical care for his accepted work condition.

OWCP notified appellant of the deficiencies of his claim, by letter dated January 6, 2012, and requested that he submit further medical evidence in support of his claim. No medical evidence was received.

In a May 18, 2012 decision, OWCP denied appellant's recurrence claim on the grounds that he had submitted insufficient medical evidence to establish that he required further medical care due to a worsening of his accepted condition.

On November 5, 2012 appellant requested a hearing before the Branch of Hearings and Review. He submitted several medical reports to the record including a December 5, 2011 report from Dr. Doan-Trang Shirley, Board-certified in internal medicine; a December 12, 2011 report from Maria Castell, Ph.D., a registered nurse practitioner; and a December 30, 2011 report from Dr. Albert Liang, a Board-certified internist.

In a December 6, 2012 decision, OWCP denied appellant's oral hearing request, finding that his hearing request was untimely made. It also advised that he could request reconsideration of his claim and submit new evidence in support of the recurrence of disability.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that before review under section 8128(a) of this title, 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 claim before a representative of the Secretary.³ 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.⁴ OWCP's regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁵

Additionally, the Board has held that OWCP, in its broad discretionary authority in the administration of FECA,⁶ has the power to hold hearings in certain circumstances where no

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

⁵ *Id.* at § 10.616(a).

⁶ 5 U.S.C. §§ 8101-8193.

legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.⁷ OWCP procedures, which require it to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.⁸

ANALYSIS

In its May 18, 2012 decision, OWCP denied appellant's recurrence claim. On November 8, 2012 appellant requested an oral hearing before the Branch of Hearings and Review. His request for a hearing was made more than 30 days after the May 18, 2012 decision. Consequently, appellant's hearing request was untimely and he was not entitled to an oral hearing as a matter of right.⁹

OWCP has the discretionary authority to grant a hearing even though a claimant is not entitled to such as a matter of right. In its December 6, 2012 decision, it properly exercised its discretion by notifying appellant that it had considered the matter in relation to the issue involved and determined that additional argument and evidence could be submitted with a request for reconsideration. The Board has held that the only limitation on OWCP's authority is reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.¹⁰ The Board finds that OWCP did not abuse its discretion in this case by denying a discretionary hearing.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely under section 8124.

⁷ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁸ *Teresa M. Valle*, 57 ECAB 542 (2006). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

⁹ *Supra* note 5.

¹⁰ See *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 6, 2012 is affirmed.

Issued: June 17, 2013
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