

FACTUAL HISTORY

On December 26, 2008 appellant, then a 48-year-old district ranger, filed an occupational disease claim (Form CA-2) alleging that he developed a psychiatric condition from long-term harassment, belittlement, verbal abuse, intimidation and aggressive behavior as a result of his federal employment duties.

By decision dated August 12, 2009, OWCP denied appellant's claim finding that his emotional condition did not occur in the performance of duty as alleged.

By letter dated August 10, 2010, appellant requested reconsideration of OWCP's decision and submitted evidence in support of his claim.

By decision dated November 4, 2010, OWCP denied modification of the August 12, 2009 decision finding that appellant's emotional condition did not occur in the performance of duty. It noted that he did not establish a compensable factor of employment and that his claimed emotional condition was a result of self-generated reactions to his supervisor's administrative and personnel actions.

On November 3, 2011 appellant requested reconsideration of OWCP's November 4, 2010 decision. In support of his request, appellant submitted arguments, medical records and copies of letters that he sent to the employing establishment inquiring about Equal Employment Opportunity (EEO) proceedings.

By decision dated January 23, 2012, OWCP denied appellant's request for reconsideration finding that he neither raised substantive legal questions nor included new and relevant evidence. It noted that appellant submitted arguments which were found to be without merit and repetitious of evidence already considered in prior decisions. OWCP further stated that the medical evidence submitted was immaterial to the issue of performance of duty and the remaining evidence submitted pertained to a separate Freedom of Information Act (FOIA) decision previously issued on August 18, 2011.³

By letter dated March 2, 2012, appellant disagreed with OWCP's January 23, 2012 decision and requested an oral hearing before the Branch of Hearings and Review.⁴

By decision dated May 9, 2012, the Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that he was not entitled to a hearing as a matter of right because he had previously requested reconsideration. It exercised its discretion and further determined that the issue in the case could equally well be addressed by requesting

³ OWCP's August 18, 2011 FOIA decision is a separate decision and not before the Board on appeal.

⁴ The Board notes that on March 13, 2012, appellant filed a notice of appeal and requested an oral argument before the Board. By letter dated March 27, 2012, the Board requested that he respond by April 18, 2012 if he wished to proceed with an oral argument before the Board. By letter dated April 27, 2012, appellant requested that his appeal before the Board be dismissed. In another letter dated April 27, 2012 to the Branch of Hearings and Review, he stated that he wished to proceed with his oral hearing and had requested dismissal of his appeal before the Board. The Board dismissed appellant's appeal on July 27, 2012, Docket No. 12-876.

reconsideration from OWCP and submitting evidence not previously considered which establishes that he sustained an injury causally related to his federal employment.⁵

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.⁶ 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.⁷ 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.⁸

Additionally, the Board has held that OWCP, in its broad discretionary authority in the administration of FECA,⁹ has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.¹⁰ 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.¹¹

ANALYSIS

Appellant's request for an oral hearing before the Branch of Hearings and Review dated March 2, 2012 was denied on the grounds that he had previously requested reconsideration pursuant to 5 U.S.C. § 8128(a).¹² In its May 9, 2012 decision, OWCP noted that, while he was not entitled to an oral hearing as a matter of right, it had considered the matter in relation to the

⁵ The Board notes that appellant submitted additional evidence after OWCP rendered its May 9, 2012 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and, therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

⁶ 5 U.S.C. § 8124(b)(1).

⁷ 20 C.F.R. § 10.615.

⁸ *Id.* at § 10.616(a).

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

¹¹ *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).

¹² See *Peggy R. Lee*, 46 ECAB 527 (1995) (where the Board found that appellant's request for an oral hearing was made after OWCP issued its decision on his request for reconsideration made pursuant to 5 U.S.C. § 8128 and therefore appellant was not entitled to an oral hearing before an OWCP hearing representative as a matter of right).

issue involved and under its discretionary authority, denied the request as appellant could pursue his claim further by requesting reconsideration and submitting evidence in support of his claim.

Appellant had previously requested reconsideration on November 3, 2011 and OWCP issued its reconsideration decision on January 23, 2012. In the instant case, appellant's request for an oral hearing, dated March 2, 2012, was made after OWCP issued its January 23, 2012 decision on his request for reconsideration made pursuant to 5 U.S.C. § 8128. Hence, OWCP correctly found that appellant was not entitled to an oral hearing before an OWCP hearing representative as a matter of right under section 8124(b)(1) of FECA as he had previously requested reconsideration.¹³

OWCP then exercised its discretion and determined that appellant's hearing request could equally well be addressed by requesting reconsideration and submitting additional evidence to address the issue in this case. The Board finds that there is no evidence of record that OWCP abused its discretion in denying appellant's hearing request.¹⁴ Thus, the Board finds that OWCP's May 9, 2012 decision denying appellant's request for an oral hearing was proper under the law and facts of this case.

CONCLUSION

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

¹³ *Id.*

¹⁴ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 9, 2012 is affirmed.

Issued: March 22, 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