

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

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**B.O., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Nashville, TN, Employer**

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**Docket No. 14-64  
Issued: April 2, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 16, 2013 appellant filed a timely appeal from an August 29, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for a hearing.<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. Because more than one year elapsed from the most recent merit OWCP decision of November 15, 2006 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the case.<sup>3</sup>

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<sup>1</sup> Included with appellant's appeal was a timely request for oral argument. In a December 19, 2013 letter, the Clerk of the Appellate Boards requested that appellant inform the Board no later than January 18, 2014 if the oral argument was still desired. As no response was received, the appeal will be decided on the record without oral argument.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> For OWCP decisions issued prior to November 19, 2008, a claimant had 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. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

## ISSUE

The issue is whether OWCP properly denied her August 9, 2013 request for an oral hearing as untimely.

## FACTUAL HISTORY

This case has previously been before the Board. In a decision dated March 1, 2001, the Board remanded the case for a merit decision with respect to the termination of appellant's compensation.<sup>4</sup> OWCP issued a merit decision dated May 24, 2001, and by decisions dated October 17, 2001 and August 6, 2002, it denied her applications for reconsideration without further merit review. By decision dated February 20, 2003, the Board affirmed the August 6, 2002 decision.<sup>5</sup> Appellant requested an oral hearing, which was denied in a June 5, 2003 decision. By decision dated May 26, 2004, the Board affirmed the June 5, 2003 OWCP decision.<sup>6</sup> Appellant requested an appeal to the Board, which was dismissed by order dated February 17, 2005 on the grounds there was no final decision of OWCP over which the Board could exercise jurisdiction.<sup>7</sup> In a June 9, 2006 decision, the Board affirmed a May 14, 2005 decision denying appellant's request for a hearing under 5 U.S.C. § 8124(b).<sup>8</sup> Appellant requested reconsideration of her claim, which OWCP denied on the merits on November 15, 2006. She requested an oral hearing, which was denied by OWCP decision dated March 7, 2007. In a January 24, 2008 decision, the Board affirmed OWCP's November 15, 2006 and March 7, 2007 decisions. The Board found that OWCP had met its burden of proof to terminate compensation for wage loss effective March 30, 1997 for the accepted back and elbow conditions and that appellant had not submitted any probative medical evidence establishing a continuing employment-related disability causally related to the accepted orthopedic conditions after March 30, 1997. The Board further found that OWCP properly denied her request for a hearing before an OWCP hearing representative as she had previously requested reconsideration. On December 22, 2008 the Board issued an order denying appellant's petition for reconsideration.<sup>9</sup> By decision dated July 8, 2008, OWCP denied reconsideration without a review of the merits. Appellant requested an oral hearing, which OWCP denied by decision dated February 26, 2009. By decision dated January 14, 2013, OWCP denied her reconsideration request as untimely filed and failure to show clear evidence of error. By decision dated July 15, 2013, the Board affirmed OWCP's January 14, 2013 decision.<sup>10</sup> The history of the case is provided in the Board's prior decisions and is incorporated herein by reference.

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<sup>4</sup> Docket No. 99-708 (issued March 1, 2001).

<sup>5</sup> Docket No. 03-199 (issued February 20, 2003).

<sup>6</sup> Docket No. 04-831 (issued May 26, 2004).

<sup>7</sup> Docket No. 04-2116 (issued February 17, 2005).

<sup>8</sup> Docket No. 05-1728 (issued June 9, 2006).

<sup>9</sup> Docket No. 07-1639 (issued December 22, 2008).

<sup>10</sup> Docket No. 13-914 (issued July 15, 2013).

In an August 9, 2013 letter, postmarked the same date, appellant expressed concern over a hearing before an OWCP hearing representative, which OWCP viewed as a hearing request. By decision dated August 29, 2013, OWCP denied the hearing request. The hearing representative noted that the Board had issued a decision on July 7, 2013 and that decisions of the Board are final and the Branch of Hearings and Review does not have jurisdiction to review decisions of the Board. OWCP indicated that it had exercised its discretion and further denied appellant's request finding that the relevant issue of the case could be equally addressed by requesting reconsideration and submitting evidence not previously considered by OWCP.

### **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 claim before a representative of the Secretary.<sup>11</sup>

The Board has previously explained that FECA grants OWCP original jurisdiction in the processing of compensation claim and section 8124(a) grants the Director of OWCP the authority to issue the initial decision in a claim for compensation.<sup>12</sup> Once an initial decision is made in a compensation claim, claimants' rights arise for further review of the claim, the right to a hearing before OWCP, the right to reconsideration before OWCP, or an appeal to the Board. The Board has clarified that OWCP's Branch of Hearings and Review does not have discretionary authority to grant a request for hearing immediately following a Board decision. OWCP's Branch of Hearings and Review may not assume jurisdiction in the claims process absent a final adverse decision by the Director of OWCP.<sup>13</sup>

### **ANALYSIS**

The factual history, as noted above, indicates that the last decision in this case was a Board decision, dated July 15, 2013, affirming a January 14, 2013 nonmerit reconsideration decision of OWCP denying appellant's reconsideration request on the grounds it was untimely filed and did not demonstrate clear evidence of error. With respect to a request for a hearing regarding the Board's July 15, 2013 decision, OWCP's Branch of Hearings and Review properly found that appellant did not have a right to a hearing. Following the Board's review of an OWCP decision, as explained in *H.C.*, there is no final decision of OWCP left unreviewed over which the Branch of Hearings and Review can assume jurisdiction to exercise its discretionary authority.

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<sup>11</sup> 5 U.S.C. § 8124(b)(1).

<sup>12</sup> *Id.*

<sup>13</sup> See *Eileen A. Nelson*, 46 ECAB 377, 381 (1994).

Appellant is not entitled to a hearing regarding the issues reviewed in the July 15, 2013 Board decision and the Branch of Hearings and Review has no discretionary authority to grant a hearing.<sup>14</sup>

**CONCLUSION**

The Board finds that OWCP properly denied her request for an oral hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 29, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>14</sup> *Id.*, see also *H.C.*, Docket No. 10-1566 (issued March 11, 2011).