

FACTUAL HISTORY

OWCP accepted that on August 11, 2008 appellant, then a 49-year-old retail sales associate, slipped and fell down at work and sustained contusions to her lower back and left ankle. It later expanded her claim to include contusions of both knees, cervical and lumbosacral sprains, an L5-S1 herniated disc, a tear of the right medial meniscus and a right shoulder contusion. Appellant stopped work and received medical and wage-loss compensation.

OWCP referred appellant, together with a statement of accepted facts and the medical record, for a second opinion examination to Dr. Leon Sultan, a Board-certified orthopedic surgeon, to determine the nature and extent of her work-related medical condition and disability. In a June 11, 2012 report, Dr. Sultan provided an accurate history of appellant's injury and set forth physical findings on examination. He found that appellant's accepted conditions had resolved and that she was no longer disabled as a result of the August 11, 2008 employment injury. Dr. Sultan determined that she was capable of returning to her date-of-injury job full time and did not require further medical treatment or physical limitations.

On April 11, 2013 OWCP proposed to terminate appellant's medical and wage-loss benefits based on Dr. Sultan's June 11, 2012 report. By decision dated May 20, 2013, it finalized the termination of appellant's medical and wage-loss compensation effective May 20, 2013.

By letter dated September 9, 2013, received by OWCP on September 17, 2013, appellant requested an oral hearing regarding the May 20, 2013 decision. She resubmitted work restriction notes, diagnostic testing and medical reports by Dr. David Toturgul, a sports medicine specialist, and Dr. Mehran Manouel, a Board-certified orthopedic surgeon.

By decision dated October 30, 2013, OWCP denied appellant's request for an oral hearing on the grounds that it was not timely filed. It found that her hearing request was dated September 9, 2013, more than 30 days after OWCP's decision issued on May 20, 2013. OWCP exercised its discretion by considering appellant's hearing request and further denied it as the issues involved could be addressed equally well pursuant to a request for reconsideration 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.² 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.³ The Board has held that section 8124(b) (1) is "unequivocal" in setting forth the time limitation for requesting

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.616(a).

hearings.⁴ OWCP regulations⁵ provide that a request received more than 30 days after an OWCP decision is subject to OWCP's discretion and the Board has held that OWCP must exercise this discretion when a hearing request is untimely.⁶

ANALYSIS

The 30-day period for determining the timeliness of a 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). As appellant's September 9, 2013 hearing request was filed on September 17, 2013 it was not within 30 calendar days of OWCP's May 20, 2013 decision. OWCP properly determined that her request for hearing was untimely filed.

OWCP exercised its discretion and determined that appellant's hearing request could equally well be addressed by requesting reconsideration and submitting additional evidence to address whether she continued to suffer residuals of her August 11, 2008 employment injury. 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.⁷ The evidence of record does not indicate that OWCP abused its discretion in its denial of appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her request for an oral hearing.

On appeal, appellant alleges that she complied with all of OWCP's requests for additional information and evidence. She listed the dates of the letters she sent OWCP regarding the termination of her medical and wage-loss compensation benefits. As previously explained, the Board does not have jurisdiction over the termination issues.⁸

CONCLUSION

The Board finds that OWCP properly denied appellant's request for a hearing.

⁴ *Joseph R. Giallanza*, 55 ECAB 186 (2003).

⁵ 20 C.F.R. § 10.616(b).

⁶ *Supra* note 4.

⁷ *Samuel R. Johnson*, 51 ECAB 612 (2000).

⁸ The Board notes that appellant submitted additional evidence following the October 30, 2013 nonmerit decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit the evidence to OWCP with a request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2014
Washington, DC

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

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

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