

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

H.S., Appellant

and

**U.S. POSTAL SERVICE, MAIN POST OFFICE,
Chicago, IL, Employer**

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**Docket No. 14-971
Issued: August 12, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 25, 2014 appellant filed a timely appeal of a March 5, 2014 decision of the Office of Workers' Compensation Programs (OWCP), denying his request for an oral hearing. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the March 5, 2014 nonmerit decision. Since more than 180 days elapsed from issuance of the February 27, 2013 decision denying his claim for a schedule award to the filing of this appeal, the Board lacks jurisdiction to review the merits of the appeal.

ISSUE

The issue is whether OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 2, 2011 appellant, then a 63-year-old mail handler equipment operator, filed a traumatic injury claim alleging that he fractured his left ankle that day when a tractor hit a pole and bent back over his foot. OWCP accepted the claim for closed left ankle bimalleolar fracture.²

On May 14, 2012 appellant filed a claim for a schedule award.

By decision dated February 27, 2013, OWCP denied appellant's claim for a schedule award. It found that the evidence of record was insufficient to establish that he sustained a permanent impairment to a scheduled member as a result of the accepted employment injury.

On January 27, 2014 appellant requested both a review of the written record and telephonic hearing before an OWCP hearing representative.

By decision dated March 5, 2014, OWCP's Branch of Hearings and Review denied appellant's hearing request as untimely filed. It considered his request and determined that his case could equally well be addressed by requesting reconsideration and submitting new evidence.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that a claimant is entitled to a hearing before an OWCP representative when a request is made within 30 days after issuance of an OWCP final decision.³ A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.⁴ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.⁵ In such a case, OWCP will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁶

ANALYSIS

A request for a hearing must be made within 30 days after issuance of an OWCP final decision. Appellant requested an oral hearing before the Branch of Hearings and Review on January 27, 2014. As his request was submitted more than 30 days following issuance of the February 27, 2013 decision, it was untimely filed.

² Appellant elected to retire effective June 2, 2012. On June 19, 2012 he elected to receive retirement benefits effective May 31, 2012.

³ 5 U.S.C. § 8124(b)(1). See *A.B.*, 58 ECAB 546 (2007); *Gerard F. Workinger*, 56 ECAB 259 (2005).

⁴ 20 C.F.R. § 10.616(b).

⁵ *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

⁶ *Teresa M. Valle*, 57 ECAB 542 (2006).

OWCP also has the discretionary power to grant a review of the written record when a claimant is not entitled to a review of the written record as a matter of right. The Board finds that OWCP, in its March 5, 2014 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request for an oral hearing on the basis that his claim could be addressed through a reconsideration application. The Board has held that as 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.⁷ In the present case, the evidence of record does not indicate that OWCP committed any abuse of discretion in connection with its denial of appellant's request for an oral hearing which could be found to be an abuse of discretion.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing as it was untimely.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 5, 2014 is affirmed.

Issued: August 12, 2014
Washington, DC

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

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

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

⁷ *Teresa M. Valle, supra* note 6; *Daniel J. Perea*, 42 ECAB 214 (1990).