

ISSUE

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

FACTUAL HISTORY

On September 21, 2000 appellant, then a 50-year-old secretary, filed a traumatic injury claim alleging that, while lifting cases of slides in the performance of duty on September 5, 2000, she pulled her back. Appellant stopped work on September 6, 2000. On November 3, 2000 OWCP accepted the claim for cervical strain, lumbar strain, and herniated discs at L3-4 and L4-5 and provided compensation benefits.

On October 18, 2012 appellant filed a claim for a schedule award.

In a December 11, 2012 decision, OWCP denied the claim for a schedule award, finding the medical evidence of record did not establish a permanent measurable impairment to a scheduled member or function of the body.

Appellant's representative requested a telephonic hearing with regard to the December 11, 2012 decision, which was held on April 17, 2013.

By decision dated June 12, 2013, OWCP hearing representative affirmed the December 11, 2012 decision

On March 25, 2014 appellant requested a hearing with regard to the December 11, 2012 decision. She asserted that her condition limited her activities and she was unable to work. Appellant also submitted additional evidence.

By decision dated April 18, 2014, OWCP denied appellant's request for a hearing as she had previously received a hearing on the same issue, for which a decision was issued on June 12, 2013. It exercised its discretion and considered her request, but found that it could be adequately addressed through a reconsideration request and the submission of new evidence.

LEGAL PRECEDENT

Section 8124(b) 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 issuance of the decision, to a hearing on her claim before a representative of the Secretary.³

Section 10.615 of the federal regulations implementing this section of FECA provides that the 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

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

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

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and OWCP must exercise this discretionary authority in deciding whether to grant a hearing.⁶ This includes the situation where a claimant requests a second hearing on an issue. There is no provision in FECA for more than one hearing on the same issue.⁷ If a request for a second hearing is made, appellant is not entitled to a hearing as a matter of right, but OWCP must exercise its discretion in determining whether to grant a hearing.⁸

ANALYSIS

On March 25, 2014 appellant requested a hearing on the December 11, 2012 decision denying her claim for a schedule award. She had previously requested and received a telephonic hearing on April 17, 2013, regarding the December 11, 2012 decision. This resulted in the hearing representative's June 12, 2013 decision. As appellant previously received a telephonic hearing, she is not entitled to another hearing as a matter of right. There is no provision in FECA for more than one hearing on the same issue.⁹

When a claimant has previously requested reconsideration or requests a second hearing on the same issue, OWCP must exercise its discretionary authority to grant or deny the hearing request. It considered the issue and found that the matter could be equally well addressed by submitting new and relevant evidence with an application for reconsideration. The Board finds that OWCP properly exercised its discretion and did not abuse its discretion in denying appellant's hearing request.¹⁰

On appeal, appellant argues the merits of the claim. As previously noted, the Board does not have jurisdiction to review the merits of the claim. She also submitted new evidence. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before OWCP at the time of its final decision.¹¹

⁵ *Id.* at § 10.616(a).

⁶ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁷ *See R.F.*, Docket No. 13-892 (issued July 5, 2013); *John S. Baldwin*, 35 ECAB 1161 (1984).

⁸ *Id.*

⁹ *Id.*

¹⁰ *See Lawrence C. Parr*, 48 ECAB 445 (1997).

¹¹ 20 C.F.R. § 501.2(c); *see Steven S. Saleh*, 55 ECAB 169 (2003).

CONCLUSION

The Board therefore finds that OWCP properly denied appellant's request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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