

FACTUAL HISTORY

On February 14, 2001 appellant, then a 49-year-old rural carrier, injured his low back in a motor vehicle accident while in the performance of duty. OWCP accepted his claim for lumbosacral neuritis on April 9, 2001. It also accepted a sprain of the lumbar spine.

On November 16, 2012 appellant requested a schedule award. By decision dated January 17, 2013, OWCP denied his claim for a schedule award. It found that the medical evidence failed to establish permanent impairment or support that he had reached maximum medical improvement due to the effects of his accepted work-related injury.

In a letter dated December 14, 2013, appellant stated that he had requested an oral hearing on February 4, 2013. He submitted an appeal form, requesting an oral hearing dated February 4, 2013 and stamped as received by the Branch of Hearings and Review on December 20, 2013. The postmark on the accompanying envelope was December 17, 2013.

In a January 16, 2014 decision, the Branch of Hearings and Review found that appellant's request for an oral hearing was not made within 30 days of the January 17, 2013 decision. Appellant was not, as a matter of right, entitled to an oral hearing. The Branch of Hearings and Review further considered his request for an oral hearing and determined that the issue in the case could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides:

“Before review under section 8128(a) of this title [relating to reconsiderations], a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section 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

Initially, the claimant can choose between an oral hearing or a review of the written record.³ The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.⁴ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.⁵ In such a case, it will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁶

² *Id.* at § 8124(b)(1).

³ 20 C.F.R. § 10.615.

⁴ *Id.* at § 10.616(a).

⁵ *L.D.*, Docket No.14-319 (issued April 24, 2014); *Herbert C. Holley*, 33 ECAB 140 (1981).

⁶ *L.D., id.*; *Rudolph Bermann*, 26 ECAB 354 (1975).

ANALYSIS

The Board finds that OWCP properly determined that appellant's December 14, 2013 request for a hearing was not timely filed. Appellant's request was made more than 30 days after the issuance of the January 17, 2013 decision and not postmarked until December 12, 2013. OWCP, therefore, properly denied his hearing as a matter of right.

OWCP proceeded to exercise its discretion in accordance with Board precedent to determine whether to grant a hearing in this case. It determined that a hearing was not necessary as the issue in the case was medical in nature and could be resolved through the submission of medical evidence in the reconsideration process. The Board finds that OWCP properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny his request for a hearing as he had other review options available.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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