

ISSUE

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

FACTUAL HISTORY

On August 3, 2011 appellant, then a 47-year-old management and program assistant, filed an occupational disease claim (Form CA-2) alleging that she sustained post-traumatic stress, anxiety and depression as a result of her federal employment duties.

By decision dated March 2, 2012, OWCP denied appellant's claim finding that her emotional condition did not occur in the performance of duty as alleged.

On April 6, 2012 appellant requested an oral hearing before the Branch of Hearings and Review.

By decision dated May 30, 2012, the Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that it was untimely filed.

By letter dated July 23, 2012, appellant requested reconsideration of the March 2, 2012 decision.

By decision dated December 18, 2012, OWCP affirmed its March 2, 2012 decision finding that the evidence of record failed to establish that appellant sustained an emotional condition in the performance of duty.

On January 18, 2013 appellant requested an oral hearing before the Branch of Hearings and Review.

By decision dated February 27, 2013, the Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that she was not entitled to a hearing as a matter of right because she had previously requested reconsideration. It exercised its discretion and further determined that the issue in the case could equally well be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which establishes that she sustained an injury causally related to her federal employment.⁴

LEGAL PRECEDENT

Section 8124(b)(1) 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 the issuance of the decision, to a hearing on his

⁴ The Board notes that appellant submitted additional evidence after OWCP rendered its February 27, 2013 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. §510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

claim before a representative of the Secretary.⁵ Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.⁶ OWCP's regulations provide that the request must be sent within 30 days of the date of the 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.⁷

Additionally, the Board has held that OWCP, in its broad discretionary authority in the administration of FECA,⁸ has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.⁹ OWCP procedures, which require OWCP to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.¹⁰

ANALYSIS

Appellant's request for an oral hearing before the Branch of Hearings and Review dated January 18, 2013 was denied on the grounds that she had previously requested reconsideration pursuant to 5 U.S.C. § 8128(a).¹¹ In its February 27, 2013 decision, OWCP noted that, while she was not entitled to an oral hearing as a matter of right, it had considered the matter in relation to the issue involved and, under its discretionary authority, denied the request as appellant could pursue her claim further by requesting reconsideration and submitting evidence in support of her claim.

Appellant had previously requested reconsideration on July 23, 2012 and OWCP had issued its reconsideration decision on December 18, 2012. In the instant case, appellant's request for an oral hearing, dated January 18, 2013, was made after OWCP issued its December 18, 2012 decision on her request for reconsideration made pursuant to 5 U.S.C. § 8128. Hence, OWCP correctly found that appellant was not entitled to an oral hearing before an OWCP hearing representative as a matter of right under section 8124(b)(1) of FECA as she had previously requested reconsideration.¹²

⁵ 5 U.S.C. § 8124(b)(1).

⁶ 20 C.F.R. § 10.615.

⁷ *Id.* at § 10.616(a).

⁸ 5 U.S.C. §§ 8101-8193.

⁹ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

¹⁰ *Teresa M. Valle*, 57 ECAB 542 (2006). See Federal (FECA) Procedure Manual, Part 2 -- Claims, Hearings and Reviews of the Written Record, Chapter 2.1601.4(b)(3) (October 1992).

¹¹ See *Peggy R. Lee*, 46 ECAB 527 (1995) (where the Board found that appellant's request for an oral hearing was made after OWCP issued its decision on his request for reconsideration made pursuant to 5 U.S.C. § 8128 and therefore appellant was not entitled to an oral hearing before an OWCP hearing representative as a matter of right).

¹² *Id.*

OWCP then exercised its discretion and determined that appellant's hearing request could equally well be addressed by requesting reconsideration and submitting additional evidence to address the issue in this case. The Board finds that there is no evidence of record that OWCP abused its discretion in denying appellant's hearing request.¹³ Thus, the Board finds that OWCP's February 27, 2013 decision denying appellant's request for an oral hearing was proper under the law and facts of this case.¹⁴

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.

CONCLUSION

The Board therefore finds that OWCP properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1).

¹³ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹⁴ Appellant must file her reconsideration request within one year of OWCP's December 18, 2012 merit decision. OWCP regulations and procedure provide that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's application for review shows clear evidence of error on the part of OWCP. *Id.* at § 10.607(b); Federal (FECA) Procedure Manual, Part 2 – Claims, Reconsiderations, Chapter 2.1602.3d (January 2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 27, 2013 is affirmed.

Issued: March 24, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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