

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

O.O., Appellant

and

**U.S. POSTAL SERVICE, INTERNATIONAL
SERVICE CENTER, Chicago, IL, Employer**

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**Docket No. 14-1321
Issued: September 8, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 19, 2014 appellant filed a timely appeal of a February 6, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed since the most recent merit decision of OWCP dated January 23, 2013 and the filing of this appeal on May 19, 2014, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's request for an oral hearing as untimely filed under 5 U.S.C. § 8124.

On appeal, appellant contends that along with work, therapy and running to doctor's appointments, the paperwork got away from her.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 22, 2012 appellant, then a 60-year-old mail handler, filed an occupational disease claim alleging that she suffered injuries to her right shoulder, neck and arms as a result of repetitive lifting and throwing of mail. By decision dated January 23, 2013, OWCP denied appellant's claim because she had failed to establish a medical diagnosis causally related to factors of her employment.

On January 4, 2014 appellant requested an oral hearing. Her request was dated January 4, 2014 and the postmark indicates that the request was mailed on the same date.

By decision dated February 6, 2014, OWCP denied appellant's request for an oral hearing as it was untimely filed. It further reviewed appellant's request at its discretion, and determined that the issue could equally well be addressed by requesting reconsideration and submitting evidence not previously considered which establishes that appellant sustained an injury in the performance of her federal employment.

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 or her claim before a representative of the Secretary.² 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.³ 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.⁴ A claimant is entitled to a hearing as a matter of right if the request is filed within 30 days.⁵

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA,⁶ 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.⁷ OWCP's procedures, which require OWCP to exercise its discretion

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.615.

⁴ *Id.* at § 10.616(a).

⁵ See *Leona B. Jacobs*, 55 ECAB 753 (2004).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

to grant or deny a hearing or review of the written record when the request is untimely or made after reconsideration, are a proper interpretation of Board precedent.⁸

ANALYSIS

In a decision dated January 23, 2013, OWCP denied appellant's claim for compensation. Appellant's request for an oral hearing of this decision was dated and postmarked January 4, 2014.⁹ In a decision dated February 6, 2014, OWCP denied appellant's hearing request as untimely. As appellant's request for a hearing was postmarked January 4, 2014, more than 30 days after OWCP issued its January 23, 2013 decision, she was not entitled to a hearing as a matter of right.

OWCP has the discretionary power to grant a hearing or review of the written record when a claimant is not entitled to a hearing or review as a matter of right.¹⁰ In its February 6, 2014 decision, it properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had determined that the case could be resolved by submitting additional evidence to OWCP with a reconsideration request. The Board has held that the only limitation on OWCP's discretionary authority is reasonableness. An 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 the established facts.¹¹ The evidence does not establish that OWCP abused its discretion by denying appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her request for an oral hearing as untimely under section 8124.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely filed under 5 U.S.C. § 8124.

⁸ *Teresa M. Valle*, 57 ECAB 542 (2006). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.2(a) (October 2011).

⁹ 20 C.F.R. § 10.616(a). See *N.M.*, 59 ECAB 511 (2008) (a hearing request must be sent within 30 days of the date of the decision for which a hearing is sought as determined by postmark or other carrier's date marking).

¹⁰ *Afegalai L Boone*, 53 ECAB 533 (2002).

¹¹ *P.S.*, Docket No. 13-2027 (issued July 2, 2014); see also *André Thyratron*, 54 ECAB 257 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 6, 2014 is affirmed.

Issued: September 8, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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