

decision, she submitted a photocopy of a postmarked envelope containing her request. Appellant explains that there was a delay in submitting the paperwork because it was an extremely busy season and she worked 9 to 10 hours in pain. She requests reconsideration of her case as she did not have any issues before working at the employing establishment.

FACTUAL HISTORY

On September 6, 2012 appellant, then a 34-year-old mail carrier, filed an occupational disease claim alleging that on August 23, 2012 she first became aware of her left wrist pain and carpal tunnel syndrome. She further alleged that on August 24, 2012 she first realized that her conditions were caused or aggravated by repetitive motion of her hands while performing her work duties six days a week.

On October 10, 2012 OWCP accepted appellant's claim for left carpal tunnel syndrome and authorized left carpal tunnel release performed on November 15, 2012. On October 24, 2013 it expanded the acceptance of her claim to include tenosynovitis of the left wrist.

On March 31, 2014 appellant filed a claim for a schedule award. In a May 28, 2014 medical report, Dr. Kellen K. Choi, an attending Board-certified orthopedic surgeon, reviewed her history, noted her complaints of persistent intermittent and vague tingling in her thumb and index finger, occasional nocturnal symptoms, difficulty with repetitive gripping and lifting activities, and soreness. Activities of daily living and household chores had become more symptomatic. Dr. Choi provided examination findings and diagnosed left carpal tunnel syndrome and status post open carpal tunnel release with mild residual symptoms. He determined that appellant had five percent impairment due to her left carpal tunnel release according to Table 15-23, page 449 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Dr. Choi concluded that she had reached maximum medical improvement in January 2013 when she was released to return to full-duty work.³

In a September 8, 2013 report, an OWCP medical adviser reviewed Dr. Choi's May 28, 2014 report and agreed with his finding that appellant had five percent impairment of the left upper extremity. He explained that Dr. Choi accurately interpreted and applied the A.M.A., *Guides*. The medical adviser determined that appellant had reached maximum medical improvement on January 3, 2014, the date she was released back to work with no restrictions and from ongoing acute orthopedic care.

In a September 26, 2014 decision, OWCP granted appellant a schedule award for an additional one percent impairment of the left upper extremity based on Dr. Choi's May 28, 2014 report and the medical adviser's September 8, 2013 report. The period of the award ran for 3.12 weeks from January 3 to 24, 2014. OWCP noted that appellant was previously paid a schedule award for four percent impairment of the right upper extremity under her claim assigned File No. xxxxxx702. The decision was mailed to appellant's address of record.

³ The Board notes that appellant returned to work on January 4, 2013 upon release to full-time regular work with no restrictions by Dr. Choi.

In an undated appeal request form postmarked December 8, 2014 and received by OWCP on December 11, 2014, appellant requested a telephone hearing with an OWCP hearing representative.

In an October 2, 2013 report, Dr. Choi noted appellant's complaints of continuing pain at the volar aspect of her right wrist with occasional numbness and tingling, and pain and weakness of her left hand. He reported that she had been able to work full duty despite these symptoms. Dr. Choi stated that no new symptoms were reported and that no improvement had been noted. He provided findings on examination and diagnosed right hand and wrist and left hand and wrist pain, ruling out compressive neuropathy. Dr. Choi concluded that appellant could continue to work while awaiting diagnostic test results.

By decision dated January 7, 2015, OWCP's Branch of Hearings and Review denied appellant's request for an oral hearing as it was untimely filed. It found that the request was not postmarked within 30 days of the issuance of the September 26, 2014 OWCP merit decision. After exercising its discretion, OWCP further found that the issue in the case could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that 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.⁴ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁵ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.⁶ Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.⁷ OWCP procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).⁸

ANALYSIS

The Board finds that OWCP properly determined that appellant's request for an oral hearing was untimely filed as it was made more than 30 days after the issuance of OWCP's

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. §§ 10.616, 10.617.

⁶ *Id.* at § 10.616(a).

⁷ *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁸ *See R.T.*, Docket No. 08-408 (issued December 16, 2008).

September 26, 2014 schedule award decision. The undated form, on which appellant requested the hearing, was postmarked on December 8, 2014. The time limitation to request an oral hearing from OWCP's Branch of Hearings and Review expired on October 27, 2014, 30 days after OWCP's September 26, 2014 decision.⁹ OWCP, therefore, properly denied appellant's hearing as a matter of right.

Although appellant's request for a hearing was untimely, OWCP has the discretionary authority to grant the request and it must exercise such discretion. In its January 7, 2015 decision, it properly exercised its discretion by notifying appellant that it had considered the matter in relation to the issue involved and that additional argument and evidence could be submitted with a request for reconsideration. The Board has held that the only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.¹⁰ In this case, there is no evidence of record that OWCP abused its discretion by denying appellant's hearing request. Accordingly, the Board finds that OWCP properly denied appellant's request for an oral hearing.

On appeal, appellant contended that she did not receive OWCP's September 26, 2014 decision until October 2014. She stated that, when she requested an "appeal" of OWCP's decision, she submitted a photocopy of a postmarked envelope containing her request. Appellant explained that there was a delay in submitting the paperwork because it was an extremely busy season and she worked 9 to 10 hours in pain. The record reveals that the September 26, 2014 decision was sent to her address of record. Absent evidence to the contrary, the presumption arises that the decision was received in the ordinary course of business.¹¹ Appellant did not submit sufficient evidence to rebut the presumption of receipt.¹²

Appellant further contended on appeal that her case should be reconsidered because she did not have any issues before working at the employing establishment. The Board does not have jurisdiction to review the September 26, 2014 schedule award decision.¹³ The only decision properly before the Board on this is the January 7, 2015 nonmerit decision which denied appellant's request for an oral hearing as untimely filed.

CONCLUSION

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

⁹ The 30-day period for determining the timeliness of an employee's request for an oral hearing or review commences the day after the issuance of OWCP's decision. See *Donna A. Christley*, 41 ECAB 90 (1989).

¹⁰ *Samuel R. Johnson*, 51 ECAB 612 (2000).

¹¹ *Jeffrey M. Sagrecy*, 55 ECAB 724 (2004).

¹² See *Nelson R. Hubbard*, 54 ECAB 156 (2002).

¹³ *Supra* note 1.

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 4, 2015
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