

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

L.S., Appellant)	
)	
and)	Docket No. 15-1433
)	Issued: December 8, 2015
U.S. POSTAL SERVICE, PARKVILLE)	
STATION, Brooklyn, NY, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On June 12, 2015 appellant filed a timely appeal from the December 17, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for an oral hearing.¹ As more than 180 days elapsed from the last merit decision, dated September 19, 2014, and the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of the claim.

ISSUE

The issue is whether OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative.

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from December 17, 2014, the date of OWCP's last decision, was June 15, 2015. Since using June 18, 2015, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is June 12, 2015, rendering the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

On appeal appellant alleges that he has not received any correspondence from OWCP since moving to his new address on September 1, 2014 and that correspondence is still being sent to his old address. Appellant noted that he has two pending cases, OWCP File Nos. xxxxxx684 and xxxxxx827, which have been ongoing since August 1, 2014

FACTUAL HISTORY

On August 4, 2014 appellant, then a 61-year-old chauffeur carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 1, 2014 he sustained a left sided lower back injury while lifting and loading relay bags onto a truck.

In support of his claim appellant submitted his statement, an executed August 4, 2014 Authorization for Examination And/Or Treatment (Form CA-16), and medical evidence.³ OWCP also received an August 8, 2014 letter from the employing establishment challenging appellant's claim.

In a letter dated August 12, 2014, OWCP informed appellant that the medical evidence of record was insufficient to establish a diagnosed condition causally related to the August 1, 2014 incident. He was advised as to the medical and factual evidence required to establish his claim and afforded 30 days to provide the requested information.

In response to the development letter appellant submitted additional medical evidence.

Appellant resubmitted the August 4, 2014 CA-17 form and August 5, 2014 report by Dr. Patel. New evidence included an August 29, 2014 right foot x-ray, request for a magnetic resonance imaging (MRI) scan and a September 2, 2014 CA-20 form from Dr. Patel diagnosing lumbosacral radiculopathy with low back due to the August 1, 2014 incident and indicating total disability from August 4, 2014 to the present.

By decision dated September 19, 2014, OWCP denied appellant's claim as he had failed to establish that the event occurred as alleged. It also found the medical evidence insufficient to establish a diagnosed condition causally related to the alleged August 1, 2014 incident. The decision was addressed to appellant's address of record on Woodvale Avenue.

On October 29, 2014 OWCP received appellant's October 14, 2014 request for a telephone hearing before an OWCP hearing representative. The address listed on the form was a Hampton Place address.

By decision dated December 17, 2014, OWCP's Branch of Hearings and Review denied appellant's hearing request as untimely filed. OWCP considered appellant's request and

³ OWCP received an August 4, 2014 duty status report (Form CA-17), an August 4, 2014 attending physician's report (Form CA-20) and an August 5, 2014 report from Dr. Sudha P. Patel, a treating Board-certified general surgeon, and an August 4, 2014 lumbar x-ray interpretation. Dr. Patel, in the August 4, 2014 CA-17, reported L5-S1 degenerative disc change and degenerative lumbar spine spurring. The August 4, 2014 Form CA-20 from Dr. Patel noted the August 1, 2014 history of injury, diagnosed low back pain, reported lumbosacral radiculopathy findings, and indicated that appellant was totally disabled from working. (Form CA-20) Similarly, in his August 5, 2014 report, Dr. Patel stated appellant was seen for an August 1, 2014 work injury, provided a history of the injury, diagnosed low back derangement and lumbosacral radiculopathy, found appellant disabled from working beginning August 4, 2014, and stated physical therapy would be required.

determined that his case could equally well be addressed by requesting reconsideration and submitting new evidence. The decision was sent to the address of record on Woodvale Avenue.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of and Office final decision.⁴ A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.⁵ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.⁶ In such a case, OWCP will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁷

ANALYSIS

A request for a hearing must, as noted above, be made within 30 days after the date of the issuance of an OWCP final decision. OWCP received a request for oral hearing on October 29, 2014. As the request was submitted more than 30 days following issuance of the September 19, 2014 decision, the Board finds that it was untimely filed.

OWCP also has the discretionary power to grant an oral hearing even if the claimant is not entitled to a review as a matter of right. The Board finds that OWCP, in its December 17, 2014 decision, properly exercised its discretion by stating that it had considered the matter and had denied appellant's request for oral hearing as his claim could be equally well addressed through a reconsideration application. The Board has held that as the only limitation on OWCP's authority is reasonableness, 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 established facts.⁸ In the present case, the evidence of record does not indicate that OWCP committed any abuse of discretion in connection with its denial of appellant's request for an oral hearing which could be found to be an abuse of discretion.

On appeal, appellant contends that he did not timely receive the September 14, 2014 decision as OWCP mailed it to an old mailing address and that he had moved on September 1, 2014. A review of the record reveals that appellant did not provide OWCP with any notice regarding a change of address at the time OWCP issued its September 14, 2014

⁴ 5 U.S.C. § 8124(b)(1). See *A.B.*, 58 ECAB 546 (2007); *Gerard F. Workinger*, 56 ECAB 259 (2005).

⁵ 20 C.F.R. § 10.616(b).

⁶ *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

⁷ *Teresa M. Valle*, 57 ECAB 542 (2006).

⁸ *Supra* note 7; *Daniel J. Perea*, 42 ECAB 214 (1990).

decision.⁹ Thus, the Board finds that OWCP properly mailed the September 14, 2014 decision to his last known address and properly denied the request as it was untimely.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 17, 2014 is affirmed.

Issued: December 8, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁹ The record reveals that appellant first referenced a change in his mailing address on the oral hearing request form dated October 14, 2014 and received by OWCP on October 29, 2014.