

ISSUE

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

FACTUAL HISTORY

On December 10, 2013 appellant, then a 46-year-old supervisory equal opportunity specialist, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition, as well as chest pains and headaches, as a result of her federal employment. On the claim form, she alleged that her duties had changed and the stress of meeting goals and managing staff became unbearable.

By decision dated March 11, 2014, OWCP denied the claim for compensation. It found that appellant had not established a compensable work factor. Appeal rights were properly enclosed. Appellant submitted additional medical evidence on March 13 and 17, 2014.

On April 11, 2014 appellant faxed to OWCP a letter stating that she "would like to file for a hearing" regarding her claim. She also wrote that if possible she would "like a reconsideration of my claim."

By letter dated April 18, 2014, OWCP advised appellant that she could only pursue one appeal procedure at a time. It indicated that she needed to specify which appeal right she wanted to pursue, and if a hearing was requested, the request must be sent to Washington, DC.

The record indicates that appellant faxed a letter to OWCP on August 6, 2014 requesting a hearing. The letter was stamped as received by OWCP's Branch of Hearings and Review on August 12, 2014.³

By decision dated September 3, 2014, OWCP found that the request for a hearing was untimely. It found the hearing request was postmarked on August 11, 2014, more than 30 days after the March 11, 2014 decision. OWCP indicated that it had considered the request and determined that the issue could equally well be addressed by requesting reconsideration and submitting new and relevant evidence.

The September 3, 2014 decision was sent to appellant's last known address. The record contains a memorandum of telephone call (Form CA-110) indicating that she had inquired about her claim and reported that she did not receive a September 3, 2014 decision. OWCP indicated that another copy would be mailed.

On December 22, 2014 appellant requested reconsideration. She submitted additional evidence on January 15, 2015.

³ It appears that the letter was forwarded to the Branch of Hearings and Review by envelope with a postmark of August 11, 2014.

By decision dated March 19, 2015, OWCP denied merit review of the claim. It found the evidence was insufficient to warrant merit review.

In a decision dated May 19, 2015, OWCP again found that the hearing request postmarked August 11, 2014 was untimely filed. The decision is identical to the September 3, 2014 decision.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides in pertinent part:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this title is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on [her] claim before a representative of the Secretary.”⁴

As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.⁵

ANALYSIS

On the present appeal, the only decision over which the Board has jurisdiction is the May 19, 2015 denial of a hearing request. OWCP issued a merit decision dated March 11, 2014 denying appellant’s claim for compensation. On April 11, 2014 appellant faxed a letter which requested both a hearing and reconsideration. After OWCP requested clarification, she submitted a letter postmarked August 11, 2014 requesting a hearing. OWCP found the August 11, 2014 request was untimely.

When OWCP receives a letter that both requests a hearing and reconsideration, it should properly consider the request for a hearing first. As the Board explained in *Johnny R. Mullins*,⁶ since a hearing may be granted only before a reconsideration review under 5 U.S.C. § 8128(a), OWCP must first consider the request for a hearing. If the original request for a hearing was timely, then OWCP should properly grant the hearing request.⁷

The Board finds that appellant faxed a hearing request to OWCP’s Branch of Hearings and Review on April 11, 2014. However, under 5 U.S.C. § 8124(b)(1), the hearing request must be made within 30 days after OWCP’s decision. The 30th day after the March 11, 2014 OWCP

⁴ 5 U.S.C. § 8124(b)(1).

⁵ See *William F. Osborne*, 46 ECAB 198 (1994).

⁶ Docket No. 05-475 (issued June 14, 2005). See also *Mary G. Allen*, 40 ECAB 190 (1988).

⁷ In *Mullins*, appellant requested a hearing and reconsideration of a July 14, 2004 OWCP decision in a July 27, 2004 letter. He subsequently submitted a hearing request postmarked August 25, 2004. The Board found that the July 27, 2004 hearing request was timely and remanded the case for an oral hearing.

decision was Thursday, April 10, 2014. Since appellant faxed the letter on April 11, 2014, it is untimely filed.

The Board has held that OWCP, in its broad discretionary authority to administer FECA, has power to hold hearings in circumstances where no legal provision is made for such hearings, and OWCP must exercise its discretion in such circumstances.⁸ In this case, OWCP advised appellant that she could submit additional relevant evidence on the issue through the reconsideration process. This is considered a proper exercise of OWCP's discretionary authority.⁹ The Board accordingly finds that OWCP properly denied the request for a hearing in this case.

On appeal appellant asserted that her request for reconsideration was denied and her documents were not properly reviewed. The only issue on appeal is the denial of the request for a hearing. As discussed, the hearing request in this case was untimely.

CONCLUSION

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

⁸ *Mary B. Moss*, 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

⁹ *See Mary E. Hite*, 42 ECAB 641, 647 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 19, 2015 is affirmed.

Issued: December 14, 2015
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board