

ISSUE

The issue is whether OWCP abused its discretion in denying appellant's request for a review of the written record as untimely filed.

FACTUAL HISTORY

On September 16, 1962 the employee, then a 36-year-old special investigator for the Internal Revenue Service, sustained an injury while observing an illegal distillery in a wooded area and experienced chest pain, chills, profuse sweating, and nausea. OWCP accepted the claim for cervical sprain, degeneration of lumbar intervertebral disc, and acute myocardial infarction. The employee stopped work on September 16, 1962 and received wage-loss compensation for which he was placed on periodic rolls.

The employee died on September 27, 2013. The death certificate noted the immediate cause of death as cardiomyopathy. Other significant conditions contributing to the employee's death were listed as coronary artery disease.

On November 20, 2013 appellant filed a claim for compensation by widow, widower, and/or children (Form CA-5) for survivor's benefits.

By decision dated January 15, 2014, OWCP denied appellant's claim as she had failed to establish a causal relationship between the employee's death and the accepted September 16, 1962 work injury, cervical sprain, degeneration of lumbar intervertebral disc, and acute myocardial infarction.

On May 21, 2014 appellant requested review of the written record before the Branch of Hearings and Review. She argued that she could not appeal the January 15, 2014 decision within 30 days because the physician delayed in providing her a report which related the employee's death to the accepted work injury.

In support of her claim, appellant submitted a May 16, 2014 medical report from Dr. Frederick A. Dressler, Board-certified in internal medicine, and also resubmitted the employee's death certificate.

By decision dated July 21, 2014, the Branch of Hearings and Review denied appellant's request for a review of the written record finding that her request was not made within 30 days of the January 15, 2014 OWCP decision. The Branch of Hearings and Review 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 established that the employee's death was caused by the accepted work-related injury/conditions.

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.³ 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.⁴ OWCP 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.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 procedures, which require it 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.⁸

ANALYSIS

In the present case, appellant requested review of the written record on May 21, 2014. Her request was made more than 30 days after the date of issuance of OWCP's January 15, 2014 merit decision. Therefore, OWCP properly found in its July 21, 2014 decision that appellant was not entitled to an oral hearing or examination of the written record as a matter of right because her request was not made within 30 days of its January 15, 2014 decision.⁹

OWCP then properly exercised its discretion by stating that it had considered the matter and had denied appellant's request for an examination of the written record because the issue of causal relationship could be addressed through a reconsideration application. The Board has held that the only limitation on OWCP's authority is reasonableness and 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 established facts.¹⁰ In this case, the evidence of record does not indicate that OWCP abused its discretion in its denial of appellant's request for an examination of the written record. Accordingly, the Board finds that OWCP properly denied her request.¹¹

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

⁵ *Id.* at § 10.616(a).

⁶ 5 U.S.C. §§ 8101-8193.

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

⁸ *Teresa M. Valle*, 57 ECAB 542 (2006).

⁹ 20 C.F.R. § 10.616(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

¹⁰ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹¹ *D.P.*, Docket No. 14-308 (issued April 21, 2014); *D.J.*, Docket No. 12-1332 (issued June 21, 2013).

On appeal, appellant alleges that the employee's death was caused by the September 16, 1962 work injury. As explained above, the Board does not have jurisdiction over the merits of the claim for survivor's benefits.¹²

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an examination of the written record.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 21, 2014 is affirmed.

Issued: January 2, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹² *Supra* note 2.