

On appeal, appellant contends that her attorney at the time never informed her that a request had been submitted for a schedule award nor that a decision had been made. She also contended that she had not been sent a copy of the schedule award decision in a timely manner. Appellant argued that she did not have the opportunity to present her case properly.

FACTUAL HISTORY

On November 7, 2003 appellant, then a 48-year-old nursing assistant, filed a traumatic injury claim alleging that on November 3, 2003, she suffered a sprain to her left arm while assisting a patient out of bed. On January 14, 2004 OWCP accepted appellant's claim for left shoulder sprain. It later accepted appellant's claim for sprain of the left upper arm, other bursitis, left, and trigger finger (acquired), left.

On September 14, 2012 appellant signed a Form CA-7 claiming a schedule award. By letter dated March 13, 2013, OWCP acknowledged to appellant that her claim for schedule award had been received. By decision dated April 15, 2013, it denied her request for a schedule award. The decision was addressed to appellant at her address of record in Bronx, New York and a copy was sent to her counsel at that time.

By letter dated April 23, 2013, appellant's counsel advised OWCP that he no longer represented appellant. By letter dated June 23, 2014, appellant told OWCP that she had not been informed about her decision until June 23, 2014 and had not been aware that her request for a schedule award had been denied until that date.

By letter dated July 23, 2014, received by OWCP on August 5, 2014, appellant requested that her "[s]chedule [a]ward hearing be reopened." She noted that on July 23, 2014, when she checked on the status of her claim with the claims examiner, she was informed that it had been denied on April 15, 2013. Appellant stated that she was unaware that the hearing had taken place and did not receive documentation stating the denial and the reason for the denial. She noted that she was no longer represented by her prior attorney, and was unaware that a schedule award request had been filed on her behalf.

By decision dated October 3, 2014, OWCP denied appellant's request for an oral hearing as it was untimely filed. It further reviewed her request at its discretion, and determined that the issue could equally well be addressed by requesting reconsideration.

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 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's regulations provide that the request must be

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

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 A claimant is entitled to a hearing as a matter of right if the request is filed within 30 days.⁶

The Board has held that OWCP, in discretionary authority⁷ 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.⁸

ANALYSIS

In a decision dated April 15, 2013, OWCP denied appellant's claim for a schedule award. Appellant's request for an oral hearing of this decision was received by OWCP on August 5, 2014. In a decision dated October 3, 2014, OWCP denied her hearing request as untimely. As appellant's request for hearing was dated July 23, 2014, more than 30 days after OWCP issued its April 15, 2013 merit decision, her request was untimely and she was not entitled to a hearing as a matter of right.

OWCP retains discretionary power to grant a hearing or review of the written record even when a claimant is not entitled to a hearing or review as a matter of right.⁹ In its October 3, 2014 decision, it exercised that discretion by stating that it had considered the matter in relation to the issue involved and denied appellant's request for an oral hearing. OWCP determined that the case could be resolved by submitting additional evidence to it 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 deductions from the established facts.¹⁰ The evidence does not establish that OWCP committed any action in connection with its denial of appellant's request for an oral hearing which could be found to be an abuse of discretion. Accordingly, the Board finds that OWCP properly denied her request for an oral hearing as untimely under section 8124.¹¹

The Board finds that appellant's arguments raised on appeal are without merit. Appellant signed the claim for a schedule award and also contacted OWCP to follow up on her claim. The Board also notes that the decision was addressed and mailed to appellant's address of record. Absent evidence to the contrary, a document properly addressed and mailed in the ordinary

⁵ *Id.* at § 10.616(a).

⁶ *See Leona B. Jacobs*, 55 ECAB 753 (2004).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁹ *Afegalai L Boone*, 53 ECAB 533 (2002).

¹⁰ *P.S.*, Docket No. 13-2027 (issued July 2, 2014); *see also André Thyratron*, 54 ECAB 257 (2002).

¹¹ *Supra* note 3.

course of business is presumed to have been received under the mailbox rule.¹² OWCP's April 15, 2013 decision was mailed to appellant's address of record and is presumed to have been received by her absent any notice of nondelivery.¹³ Furthermore, the Board notes that an additional copy of the decision was sent to appellant's former attorney.¹⁴

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 3, 2014 is affirmed.

Issued: July 14, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹² See *James A. Gray*, 54 ECAB 277 (2002).

¹³ *A.M.*, Docket No. 14-1546 (issued December 16, 2014).

¹⁴ See 20 C.F.R. § 10.127, which provides in pertinent part: "A copy of the decision shall be mailed to the employee's last known address. If the employee has a designated representative before OWCP, a copy of the decision will also be mailed to the representative...."