

In a March 17, 2014 hospital report, Amy Rowe, a physician assistant, noted seeing appellant in the emergency department where he was released to return to work on March 19, 2014. She diagnosed cervical strain, concussion/head injury (adult), fall prevention, head injury, headache, and postconcussive syndrome.

In a letter dated April 7, 2014, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised as to the medical and factual evidence required and given 30 days to provide this information.

In response to OWCP's letter, appellant submitted a statement further describing how the March 17, 2014 incident occurred.

On April 29, 2014 OWCP received a March 17, 2014 report of Dr. Gary Kronick, a Board-certified internist.² The report related that the injury occurred while appellant was walking into work when he saw an identification badge on the ground. As he bent over to pick up the badge, appellant lost his balance and struck the wall with his head. Complaints included a bump on his forehead, stiff neck and abrasion along the bridge of his nose. A physical examination revealed multiple head and nose bruising.

By decision dated May 8, 2014, OWCP denied appellant's claim as it found he failed to establish fact of injury as there was no diagnosed condition.

On September 23, 2014 OWCP received appellant's September 16, 2014 request for an oral hearing, *via* telephone before an OWCP hearing representative. The request was postmarked September 16, 2014.

By decision dated October 29, 2014, OWCP's Branch of Hearings and Review denied appellant's hearing request as untimely filed. OWCP considered appellant's request and determined that his case could equally well be addressed by requesting reconsideration and submitting new evidence.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that a claimant is entitled to a hearing before an OWCP hearing representative when a request is made within 30 days after issuance of an OWCP final decision.³ A claimant is not entitled to a hearing if the request is outside that time frame as determined by receipt of the request.⁴ OWCP has discretion, however, to grant or deny a request

² The American Board of Medical Specialties indicated that Dr. Kronick was not meeting maintenance of certification requirements.

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

⁴ 20 C.F.R. § 10.616(b).

that is made after this 30-day period.⁵ In such a case, it will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁶

ANALYSIS

A request for a hearing must, as noted above, be made within 30 days after the date of the issuance of OWCP's final decision. Appellant requested a telephone hearing before OWCP's Branch of Hearings and Review on a form dated and postmarked September 16, 2014 and received on September 23, 2014 by the Board of Hearings and Review. Because the request was received by OWCP more than 30 days following issuance of the May 8, 2014 decision, it was untimely filed.

OWCP retains the discretion to grant an oral hearing even though a claimant is not entitled to an oral hearing as a matter of right. The Board finds that OWCP, in its October 29 2014 decision, properly exercised its discretion. The decision stated that it had considered the matter in relation to the issue involved and had denied appellant's request for an oral hearing because her claim could be 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.⁷ In the present case, the evidence shows that OWCP did not abuse its discretion when it denied appellant's request for an oral hearing.

CONCLUSION

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

⁵ *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

⁶ *Teresa M. Valle*, 57 ECAB 542 (2006).

⁷ *Id.*; *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 23, 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