

FACTUAL HISTORY

On November 18, 2013 appellant, then a 46-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 16, 2013 she sustained carpal tunnel syndrome (CTS) of the right lower arm as a result of repetitive movement of the right hand for which she previously had carpal tunnel surgery.

In a November 18, 2013 accident report form, appellant's supervisor stated that on November 16, 2013 appellant felt a sharp pain in her right shoulder/arm down to her right hand and finger tips. He noted that appellant had undergone carpal tunnel surgery in April 2013.

A November 18, 2013 medical report and x-ray of the right wrist was submitted from Dr. William S. Cragun, a Doctor of Osteopathic Medicine. Attending Physician's Reports (Form CA-20) and Duty Status Reports (Form CA-17) dated November 4, 2013 through December 23, 2013 were also submitted from Dr. Christyne Lawson, Board-certified in family medicine.

By letter dated January 14, 2014, appellant requested that her file be updated because she had been off work since November 17, 2013.

By letter dated February 11, 2014, OWCP stated that when appellant's claim was first received, it appeared to be a minor injury, which resulted in minimal or no lost time from work, and payment of a limited amount of medical expenses was administratively approved. It reopened the claim for consideration because appellant had not returned to work in a full-time capacity. OWCP informed appellant that the evidence submitted was insufficient to establish that the incident or employment factor occurred as alleged or how her injury resulted in the diagnosed condition.³ It instructed her of the medical and factual evidence needed, provided her a series of questions to answer, and afforded her 30 days to respond to its inquiries.

On February 25, 2014 OWCP received a February 12, 2014 medical report from Dr. Lawson. He noted treating appellant for severe bilateral carpal tunnel syndrome aggravated by her November 16, 2013 job injury. No other evidence or statements were received.

By decision dated April 21, 2014, OWCP denied appellant's claim finding that the evidence failed to establish that the incident occurred as alleged. It specifically noted that she had not identified a specific factor of employment which caused or aggravated her condition and also had failed to submit medical evidence establishing that an injury was caused by the work incident or event.

In an appeal request form postmarked May 22, 2014, appellant requested an oral hearing before the Branch of Hearings and Review. Accompanying the appeal request form was a May 21, 2014 letter requesting a hearing for the April 21, 2014 decision denying her claim.

In support of her claim, appellant responded to OWCP's February 11, 2014 development letter. She provided details regarding her employment duties, the November 16, 2013 injury, her prior OWCP claims, and her course of medical treatment.

³ OWCP noted that appellant had a previous claim accepted for bilateral CTS under claim No. xxxxxx586.

By decision dated October 17, 2014, the Branch of Hearings and Review denied appellant's request for an oral hearing finding that her request was not made within 30 days of the April 21, 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 she sustained an injury.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that 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.⁴ 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.⁵ OWCP regulations provide that the request must be postmarked within 30 days of the date of the decision for which a hearing is sought, as determined by postmark or other carrier's date marking, and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁶

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA,⁷ 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 OWCP procedures, which require OWCP 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.⁹

ANALYSIS

In the present case, appellant's request for oral hearing was postmarked on May 22, 2014. Her request was made more than 30 days after OWCP's April 21, 2014 merit decision. The time limitation to request an oral hearing expired on May 21, 2014, 30 days after the April 21, 2014 decision. Therefore, OWCP properly found in its October 17, 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 April 21, 2014 decision.¹⁰

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. § 10.615.

⁶ *Id.* at § 10.616(a).

⁷ 5 U.S.C. §§ 8101-8193.

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

⁹ *Teresa M. Valle*, 57 ECAB 542 (2006).

¹⁰ *Supra* note 5; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

OWCP then properly exercised its discretion by stating that it had considered the matter and had denied appellant's request for a hearing because the issue of fact of injury could be addressed through reconsideration. The Board has held that the only limitation on OWCP's 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 deduction from established facts.¹¹ In this case, the evidence of record does not indicate that OWCP abused its discretion in its denial of an oral hearing. Accordingly, the Board finds that OWCP properly denied her request.¹²

On appeal, appellant argues that her injury was work related. The Board notes that OWCP's April 21, 2014 denial of appellant's claim provided a timeline and instructions pertaining to the different forms of appeal. Any additional evidence on the merits of her claim cannot be reviewed by the Board for the first time on appeal.¹³

CONCLUSION

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

¹¹ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

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

¹³ 20 C.F.R. § 501.2(c).

ORDER

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

Issued: July 13, 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