

ISSUE

The issue is whether OWCP abused its discretion in denying appellant's request for an oral hearing before the Branch of Hearings and Review as untimely filed.

FACTUAL HISTORY

On May 13, 2014 appellant, then a 47-year-old heavy mobile equipment repairer, filed an occupational disease claim (Form CA-2) alleging that he developed a bilateral wrist injury in the performance of his federal employment duties.

By letter dated May 15, 2014, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

In support of his claim, appellant submitted an official position description for heavy mobile equipment mechanic and a notification of personnel action.

Appellant also submitted clinic passes dated May 7, 8, and 14, 2014, medical restriction forms dated May 7 and 14, 2014, and a chronological record of medical care dated May 7, 2014.

In medical reports dated May 7 and 14, 2014, Dr. Daniel P. Bigley, Board-certified in family medicine, provided findings on physical examination and diagnosed tenosynovitis of the hands.

By decision dated June 30, 2014, OWCP denied appellant's claim finding that the evidence of record failed to establish that the tenosynovitis of the hands was causally related to the established work-related events.

In an appeal request form dated July 31, 2014, appellant requested an oral hearing before the Branch of Hearings and Review.

In support of his claim, appellant submitted a July 21, 2014 rehabilitation services note and work status form, a July 22, 2014 clinic pass, a July 25, 2014 diagnostic report of the upper joint, and a November 10, 2014 attending physician's report (Form CA-20).

By decision dated November 24, 2014, the Branch of Hearings and Review denied appellant's request for an oral hearing finding that his request was not made within 30 days of the June 30, 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 he sustained an injury causally related to his federal employment duties.

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.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 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.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 requested review of the written record on July 31, 2014 and OWCP found that the reconsideration request was postmarked on that same date. As the 30th day following June 30, 2014 was Wednesday, July 30, 2014, appellant's request was made more than 30 days after the date of issuance of OWCP's prior June 30, 2014 merit decision. Therefore, OWCP properly found in its November 24, 2014 decision that appellant was not entitled to an oral hearing or examination of the written record as a matter of right because his request was not made within 30 days of its June 30, 2014 decision.¹⁰

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 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.¹¹ In this case, the evidence of

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

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

record does not indicate that OWCP abused its discretion in its denial of appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied his request.¹²

On appeal, appellant argued that his injury was work related and his paperwork was late because he had to wait three weeks to see his physician. The Board notes that OWCP's June 30, 2014 denial of appellant's claim was accompanied with appeal rights which provided a timeline and instructions pertaining to the different forms of appeal. Appellant's request for an oral hearing was not made within 30 days. Additional evidence which was not before OWCP at the time it issued its June 30, 2014 merit decision cannot be considered 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.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 24, 2014 is affirmed.

Issued: June 19, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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).