

FACTUAL HISTORY

On May 29, 2013 appellant, then a 47-year-old nurse, filed a traumatic injury claim and claim for compensation alleging that on February 14, 2013 she had pulled or strained her left biceps muscle while carrying a box from her car to the clinic, a distance of over 600 to 700 feet. She stated that the injury occurred in the parking lot of the Lackland Air Force Base. There is no indication that she stopped work.

By decision dated October 9, 2013, OWCP denied the claim as the evidence was insufficient to establish that the injury and/or medical condition arose during the scope of employment or within the scope of compensable work factors. It specifically noted that appellant had stopped by the American Cancer Society on her way to work on February 14, 2013 to pick up patient education materials and the employing establishment stated in its August 6, 2013 statement that, at the time of injury, appellant was not at a place of employment and had no entitlement to reimbursement for travel.

On April 9, 2014 appellant requested a review of the written record. On the appeal request form, she noted this was the second request and the original request was dated December 12, 2013. The request was postmarked April 9, 2014. Several medical reports were also submitted.

By decision dated May 23, 2014, OWCP denied appellant's request for a hearing on the grounds that it was not timely filed within 30 days of the October 9, 2013 decision. It exercised its discretion by performing a limited review of the evidence and further denied her request as the issue in the case could be addressed equally well pursuant to a valid request for reconsideration.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that a claimant not satisfied with a decision of OWCP has a right, upon timely request, to a hearing before an OWCP representative.⁴ Section 10.615 of Title 20 of the Code of Federal Regulations provide that a hearing is a review of an adverse decision by an OWCP hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record.⁵

A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark or other carrier's date marking of the request.⁶ OWCP has discretion, however, to grant or deny a request that is made after this

⁴ 5 U.S.C. § 8124(b)(1). See *A.B.*, 58 ECAB 546 (2007); *Joe Brewer*, 48 ECAB 411 (1997).

⁵ 20 C.F.R. § 10.615.

⁶ *Id.* at § 10.616(a).

30-day period.⁷ In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.⁸

ANALYSIS

By decision dated October 9, 2013, OWCP denied appellant's claim for compensation as the evidence did not establish that she was injured in the performance of duty. Appellant requested a review of the written record on an appeal request form dated and postmarked April 9, 2014. OWCP denied her request by decision dated May 23, 2014 as it was filed more than 30 days after OWCP's October 9, 2013 decision.

Appellant's letter requesting an oral hearing was postmarked on April 9, 2014, more than 30 days after issuance of the October 9, 2013 decision. Thus, OWCP properly found that her request for an oral hearing was not timely filed under section 8124(b)(1) of FECA and that she was not entitled to a hearing as a matter of right. While she indicated that this was her second request, there is no evidence of record to support an earlier request for review of the written record, or any other review, made prior to April 9, 2014.⁹

OWCP exercised its discretion and denied appellant's request for a hearing on the additional grounds that she could address the issue in her case equally well by submitting relevant evidence accompanying a valid request for reconsideration. Because reconsideration exists as an alternative review right to address the issues raised by OWCP's October 9, 2013 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for an oral hearing.¹⁰

On appeal appellant argues the merits of her case. However, as previously noted, the Board does not have jurisdiction over the merits of this case. Appellant also submitted evidence on appeal. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision.¹¹

CONCLUSION

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

⁷ *G.W.*, Docket No. 10-782 (issued April 23, 2010). *See also Herbert C. Holley*, 33 ECAB 140 (1981).

⁸ *Id.* *See also Rudolph Bermann*, 26 ECAB 354 (1975).

⁹ The Board notes that a December 12, 2013 request for hearing would also not have been filed within 30 days of October 9, 2013.

¹⁰ *See Gerard F. Workinger*, 56 ECAB 259 (2005).

¹¹ *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 2015
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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