

FACTUAL HISTORY

On April 24, 2013 appellant, then a 30-year-old border patrol officer, filed a traumatic injury claim (Form CA-1), alleging that on April 11, 2013 while participating in training drills which included running and doing lunges, she twisted her left knee. Appellant's supervisor did not dispute the factual elements of her claim. The employing establishment did not indicate that appellant stopped work at that time.

In a statement dated July 11, 2014, appellant indicated that she was injured in 2013 while attending the employing establishment's basic training at the Federal Law Enforcement Training Center (FLETC). She was treated by an orthopedist on April 24, 2014 and was placed on light duty and prescribed physical therapy. Appellant reported being pregnant. She submitted employing establishment health unit notes dated April 12 and 23, 2013 prepared by a physician assistant, who treated her for left knee pain. Appellant reported doing lunges and jumping jacks while training and injuring her left knee. The physician assistant diagnosed left knee pain, possible meniscal involvement.

Appellant came under the treatment of Dr. Ralph W. Morales, an osteopath and Board-certified orthopedist, on April 23, 2013, for a left knee injury. She reported twisting her left knee on April 11, 2013 during physical training exercises at the FLETC. Dr. Morales diagnosed left knee capsular strain and anterior cruciate ligament tear.

Appellant was treated by Dr. David J. Mansfield, a Board-certified orthopedist, on July 22 and August 25, 2014, for moderate bilateral knee pain located in the patella femoral area. She reported sustaining a work-related hyperflexion injury occurring on March 1, 2013. Dr. Mansfield diagnosed bilateral knee pain and left anterior cruciate ligament tear and recommended a functional left knee brace for stability. He returned appellant to sedentary light-duty work.

By letter dated August 28, 2014, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim. It specifically requested that she substantiate the factual elements of her claim and respond to a questionnaire.

Appellant submitted reports from Dr. Morales dated August 25, 2014, previously of record. She also submitted a narrative statement providing additional factual information concerning the incident on April 11, 2013.

In a decision dated November 19, 2014, OWCP denied appellant's claim finding that the evidence did not support that the injury or events occurred in the performance of duty.

In an appeal request form dated March 12, 2015³ and postmarked March 27, 2015, appellant requested an oral telephone hearing before an OWCP hearing representative. She also submitted additional evidence.

³ The Board notes that appellant indicated March 12, 2014 as the date of her oral hearing request. However, as the appeal request form reflected that it was attached to the November 19, 2014 OWCP decision, the Board concludes that appellant meant March 12, 2015.

In a decision dated May 6, 2015, OWCP denied appellant's request for an oral hearing as it found that the request was untimely filed. Appellant was informed that her request was denied as she had not made her request for oral hearing within 30 days of November 19, 2014, and that the request was further denied because the issues in this case could equally well be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered.

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 claim before a representative of the Secretary."⁴ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁵ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.⁶ Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.⁷

ANALYSIS

Appellant requested a telephone hearing in a request dated March 12, 2015 and postmarked on March 27, 2015. This was more than 30 days after the November 19, 2014 OWCP decision. Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.⁸ Because the hearing request was untimely filed, appellant was not entitled to an oral hearing.

OWCP has the discretionary power to grant an oral hearing when a claimant is not entitled to one as a matter of right. It exercised this discretion in its May 6, 2015 decision, finding that appellant's issue could be addressed by requesting reconsideration and submitting additional evidence. This basis for denying her request for a hearing is a proper exercise of OWCP's authority.⁹ Accordingly, the Board finds that OWCP properly denied appellant's request for an oral hearing.

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. §§ 10.616, 10.617.

⁶ *Id.* at § 10.616(a).

⁷ *Delmont L. Thompson*, 51 ECAB 155 (1999); *Eddie Franklin*, 51 ECAB 223 (1999).

⁸ *William F. Osborne*, 46 ECAB 198 (1994).

⁹ *Mary B. Moss*, 40 ECAB 640, 647 (1989).

On appeal, appellant indicated that her injury was directly related to her job and occurred while training at FLETC. She referenced additional evidence submitted in support of her claim. However, as noted, the Board does not have jurisdiction over the merits of the claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2015
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board