

On appeal, appellant contends that he sustained a work-related injury on March 18, 2015 due to his exposure to a hazardous substance.

FACTUAL HISTORY

On March 19, 2015 appellant, then a 40-year-old aircraft mechanic, filed a traumatic injury claim (Form CA-1) alleging that on March 18, 2015 he inhaled hydrazine at work. A coworker stated that he witnessed the incident.

By letter dated March 26, 2015, OWCP notified appellant of the deficiencies of his claim and requested factual and medical evidence. It also requested that the employing establishment submit medical evidence, if appellant had been treated at its medical facility.

In a March 18, 2015 medical report, Dr. Terry D. Yeager, a Board-certified radiologist, found that appellant's chest x-ray was normal.

An unsigned nurse interview note dated March 25, 2015 revealed that appellant had been seen for a follow-up visit for his hydrazine exposure. The note provided a history of his medical, social, and family background and indicated that his vitals were taken.

A progress note dated March 25, 2015 of Dr. Darren D.W. Chester, a Board-certified family practitioner, provided appellant's history of injury and medical, family, and social background. It found that appellant had no symptoms. Appellant's vitals were noted and his laboratory test results were reviewed. He was diagnosed with exposure to a toxic substance.

In a May 7, 2015 decision, OWCP accepted that the March 18, 2015 incident occurred as alleged. However, it found that the medical evidence failed to establish a medical condition causally related to the accepted employment incident.

In an appeal request form dated May 21, 2015, postmarked on June 12, 2015, and received by OWCP's Branch of Hearings and Review on June 16, 2015, appellant requested a telephone hearing with an OWCP hearing representative.

By decision dated January 5, 2016, the Branch of Hearings and Review denied appellant's request for a telephone hearing as it was untimely filed. It found that the request was not postmarked within 30 days of the issuance of the May 7, 2015 OWCP merit decision. After exercising its discretion, the Branch of Hearings and Review further found that the issue in the case could be equally well addressed through the reconsideration process.

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.³ Sections 10.617 and 10.618 of the federal regulations implementing this section of

³ 5 U.S.C. § 8124(b)(1).

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.⁴ 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.⁵ 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.⁶ Its procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).⁷

ANALYSIS

The Board finds that OWCP properly determined that appellant's request for an oral hearing was untimely as it was filed more than 30 days after the issuance of OWCP's May 7, 2015 merit decision. The May 21, 2015 form, on which appellant requested the hearing, was postmarked on June 12, 2015. Because the postmark date was more than 30 days after the date of OWCP's May 7, 2015 decision, he was not entitled to a hearing as a matter of right.⁸ OWCP, therefore, properly denied appellant's hearing as a matter of right.

Although appellant's request for a hearing was untimely, OWCP has the discretionary authority to grant the request and it must exercise such discretion. In its January 5, 2016 decision, it properly exercised its discretion by notifying appellant that it had considered the matter in relation to the issue involved and that additional argument and evidence could be submitted with a request for 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, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.⁹ In this case, there is no evidence of record that OWCP abused its discretion by denying appellant's hearing request. Accordingly, the Board finds that OWCP properly denied appellant's request for an oral hearing.

On appeal, appellant contends that he sustained a work-related injury on March 18, 2015 due to his exposure to a hazardous substance. As explained, however, the Board does not have jurisdiction to review the merits of the May 7, 2015 denial. The only decision properly before the Board on this appeal is the January 5, 2016 nonmerit decision which denied appellant's request for an oral hearing as untimely filed.

⁴ 20 C.F.R. §§ 10.616, 10.617.

⁵ *Id.* at § 10.616(a).

⁶ *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁷ *See R.T.*, Docket No. 08-408 (issued December 16, 2008).

⁸ The 30-day period for determining the timeliness of an employee's request for an oral hearing or review commences the day after the issuance of OWCP's decision. *See Donna A. Christley*, 41 ECAB 90 (1989).

⁹ *Samuel R. Johnson*, 51 ECAB 612 (2000).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124.

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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