

On appeal, appellant contends that his claim was improperly denied based on a response from his former supervisor.

FACTUAL HISTORY

On June 10, 2014 appellant, then a 41-year-old technical enforcement officer, filed an occupational disease claim (Form CA-2) alleging that on May 21, 2014 he first became aware of his anxiety and stress, and first realized that his conditions were caused or aggravated by his work duties.

In a May 27, 2014 letter, Dr. Tenessa M. Mackenzie, an attending Board-certified family practitioner, recommended that appellant be off work for two weeks due to stress and anxiety. She also recommended medications and counseling. Dr. Mackenzie advised that appellant should be able to return to work on June 9, 2014.

By letter dated July 3, 2014, OWCP informed appellant of the deficiencies of his claim and requested additional medical and factual evidence. It also requested that the employing establishment respond to appellant's allegations and submit medical evidence, if he had been treated at its medical facility.

In an August 1, 2014 letter, Jeffrey W. Spada, an acting assistant special agent-in-charge, responded that, among other things, appellant shared responsibilities with two other positions in the immediate office and with other employees who all worked to cover the programmatic area. He was not exposed to stressors beyond the standard level of stress routine for a law enforcement agency or position. Mr. Spada submitted a copy of appellant's technical enforcement officer position.

By decision dated December 8, 2014, OWCP denied appellant's occupational disease claim as the evidence failed to establish the factual component of fact of injury.

In an appeal request form dated June 12, 2015, postmarked on June 15, 2015, and received by OWCP's Branch of Hearings and Review on June 18, 2015, appellant requested a telephone hearing with an OWCP hearing representative.

By decision dated July 14, 2015, the Branch of Hearings and Review denied appellant's request for an oral hearing as it was untimely filed. It found that the request was not postmarked within 30 days of the issuance of the December 8, 2014 OWCP merit decision. After exercising its discretion, the Branch of Hearings and Review further found that the issue in the case could equally well be 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 OWCP 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 filed as it was made more than 30 days after the issuance of OWCP's December 8, 2014 merit decision. The June 12, 2015 form, on which appellant requested the hearing, was postmarked on June 15, 2015. The time limitation to request an oral hearing from OWCP's Branch of Hearings and Review expired 30 days after OWCP's December 8, 2014 decision.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 July 14, 2015 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 his claim was improperly denied based on a response from his former supervisor who was aware of his condition. As explained, however, the Board lacks jurisdiction to review the merits of the December 8, 2014 denial. The only decision properly before the Board on this appeal is the July 14, 2015 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 July 14, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2016
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board