

**United States Department of Labor
Employees' Compensation Appeals Board**

A.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Diego, CA, Employer**

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**Docket No. 16-0750
Issued: June 28, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 7, 2016 appellant filed a timely appeal from a December 22, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed since the last merit decision dated June 26, 2015 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP abused its discretion in denying appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1).

FACTUAL HISTORY

Appellant, a 58-year-old letter carrier, filed a traumatic injury claim (Form CA-1) for benefits on August 18, 2014, alleging that he injured his left knee, left ankle, right wrist, right

¹ 5 U.S.C. § 8101 *et seq.*

elbow, and shoulder on September 24, 2012 when he slipped and fell on seeds while walking on a sidewalk. On December 4, 2014 OWCP accepted the claim for left knee sprain, right shoulder sprain, and right wrist sprain.

By letter dated February 19, 2015, OWCP advised appellant that requests for authorization of medical treatment had been received for left knee endstage osteoarthritis with degenerative meniscal tear and cervical radiculitis. It noted, however, that these conditions were not accepted as causally related to the August 18, 2014 employment injury. Appellant was afforded 30 days to submit medical documentation that his claim should be expanded.

In a report dated April 30, 2015, Dr. John W. Miles, a Board-certified orthopedic surgeon, related that he was treating appellant for his left knee condition, but that Dr. Lester Deguzman, a family practitioner, was the treating physician for appellant's cervical condition. He explained that appellant had a preexisting left knee condition, but that his medial compartment complaints increased substantially since his fall at work. Dr. Miles related that a magnetic resonance imaging (MRI) scan revealed advanced tricompartmental arthritis and tear of the medial meniscus. He concluded that, while appellant did have a preexisting condition, it was aggravated by the employment injury.

In a report dated May 5, 2015, Dr. Deguzman noted diagnoses of neck strain, right shoulder strain, left knee contusion, left knee severe osteoarthritis, and left knee degenerative meniscal tear. He related that appellant had failed conservative treatment of his neck and right shoulder conditions.

By decision dated June 26, 2015, OWCP denied expansion of appellant's claim, finding that he failed to submit sufficient medical evidence to expand his claim to include additional diagnoses of cervical radiculitis and left knee endstage medial compartment osteoarthritis with degenerative meniscal tear.

On October 16, 2015 appellant requested an oral hearing before an OWCP hearing representative.

In a decision dated December 22, 2015, OWCP denied appellant's request for a hearing as untimely filed pursuant to 5 U.S.C. § 8124. It informed appellant that his case had been considered in relation to the issues involved and that the request was further denied for the reason that the issue in this case could be addressed by requesting reconsideration from the district office 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.² Section 10.615 of the federal regulations implementing this section of FECA provides that a hearing is a review of an adverse decision by an OWCP hearing representative. Initially, the

² *Id.* at § 8124(b)(1).

claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.³ A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which the hearing is sought.⁴ A claimant is not entitled to a hearing if the request is not made within 30 days of the date of the decision.⁵ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.⁶ In such a case, it will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁷

While a claimant may not be entitled to a hearing as a matter of right if the request is untimely, OWCP has the discretionary authority to grant the request and must properly exercise such discretion.⁸

ANALYSIS

On October 16, 2015 appellant requested an oral hearing. Because he did not request the hearing within 30 days of the June 26, 2015 decision, he was not entitled to a hearing as a matter of right under section 8124(b)(1).

OWCP has the discretionary authority to grant the request and it must exercise such discretion. In its December 22, 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 evidence and argument 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.

³ 20 C.F.R. § 10.615.

⁴ *Id.* at § 10.616(a).

⁵ *James Smith*, 53 ECAB 188 (2001).

⁶ 20 C.F.R. § 10.616(b).

⁷ *Supra* note 5.

⁸ *See id.*; *Cora L. Falcon*, 43 ECAB 915 (1992); *Mary B. Moss*; 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

⁹ *See R.P.*, Docket No. 16-0477 (issued April 18, 2016).

CONCLUSION

The Board finds that OWCP did not abuse its discretion in denying appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1).

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2015 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 28, 2016
Washington, DC

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

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

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