

FACTUAL HISTORY

On November 15, 2014 appellant, then a 52-year-old ward administrator, filed an occupational disease claim (Form CA-2) alleging that she developed a right hip and thigh condition as a result of performing her work duties. She first became aware of her condition and realized it was related to her federal employment on August 28, 2014. Appellant stopped work on September 1, 2014.

By letter dated November 24, 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 an undated attending physician's report from Dr. Fida Bachour, a Board-certified internist, who diagnosed an injury of the right hip status post fall. Dr. Bachour noted that appellant's condition was neither caused nor aggravated by an employment activity. She noted that appellant was disabled until November 17, 2014. In an attending physician's report dated October 14, 2014, Dr. Bachour diagnosed injury of the right hip status post fall. She noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. Dr. Bachour noted that appellant reported walking down stairs at work and tripping over a metal plate threshold and falling, injuring her right hip and leg. She recommended physical therapy and returned appellant to work on November 17, 2014. On August 31, 2014 appellant was treated by Dr. Michael Bellino, Board-certified in emergency medicine, for groin and radiating back pain.

In a decision dated February 5, 2015, OWCP denied appellant's claim, finding that the evidence of record did not support that an injury occurred.

In an undated appeal request form received on May 28, 2015 and postmarked May 18, 2015, appellant requested an oral hearing. She also submitted additional evidence.

In a decision dated June 17, 2015, OWCP denied appellant's request for an oral hearing. It found that the request was untimely filed. Appellant was informed that her case had been considered in relation to the issues involved, and that the request was further denied as the issues in the case could be adequately 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."² Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provides 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.³ A claimant is entitled to a hearing or review of the

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. §§ 10.616, 10.617.

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.⁴ 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.⁵

ANALYSIS

Appellant requested an oral hearing by form received on May 28, 2015 and postmarked on May 15, 2015. This was more than 30 days after the February 5, 2015 OWCP decision. Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.⁶ 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 June 17, 2015 decision, finding that appellant's arguments could be adequately addressed by requesting reconsideration and submitting additional evidence. This basis for denying appellant's request for a hearing is a proper exercise of OWCP's authority.⁷ Accordingly, the Board finds that OWCP properly denied her request for an oral hearing.

On appeal, appellant indicated that her injury was directly related to her job and requests that the Board reevaluate 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.

⁴ *Id.* at § 10.616(a).

⁵ *Delmont L. Thompson*, 51 ECAB 155 (1999); *Eddie Franklin*, 51 ECAB 223 (1999).

⁶ *William F. Osborne*, 46 ECAB 198 (1994).

⁷ *Mary B. Moss*, 40 ECAB 640, 647 (1989).

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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