

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

R.P., Appellant	)	
	)	
and	)	<b>Docket No. 16-0554</b>
	)	<b>Issued: May 17, 2016</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Buffalo, NY, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On February 3, 2016 appellant filed a timely appeal from a December 30, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated June 18, 2014 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 properly denied appellant's request for an oral hearing before the Branch of Hearings and Review.

**FACTUAL HISTORY**

On November 2, 2001 appellant, then a 47-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she had developed bilateral carpal tunnel syndrome as a result of her repetitive employment duties.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

By decision dated February 6, 2002, OWCP accepted the claim for bilateral carpal tunnel syndrome. By decision dated October 25, 2005, it accepted a claim for recurrence of disability beginning October 7, 2005.

On August 12, 2013 appellant filed a claim for a schedule award (Form CA-7).

By letter dated October 3, 2013, OWCP requested that appellant submit an impairment evaluation from her attending physician in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009) (A.M.A., *Guides*). It provided her 30 days to submit the requested impairment evaluation.

In support of her claim, appellant submitted August 1 and October 22, 2013 medical reports from Dr. James P. Fitzgerald, a Board-certified orthopedic surgeon. Dr. Fitzgerald provided findings on physical examination and diagnosed bilateral carpal tunnel syndrome. Using the sixth edition of the A.M.A., *Guides*,<sup>2</sup> he opined that appellant had one percent permanent impairment of the right upper extremity and percent permanent impairment of the left upper extremity.

By decision dated June 18, 2014, OWCP denied appellant's claim for a schedule award as the evidence of record was insufficient to establish any permanent impairment to a member or function of the body. It noted that Dr. Fitzgerald's reports did not provide a maximum medical improvement (MMI) date and failed to submit measurements, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of impairment as required by the A.M.A., *Guides*.

By letter dated June 30, 2015, appellant reported that she had contacted OWCP, had spoken with a claims examiner and was informed that her schedule award had been denied due to lack of medical evidence. She argued that Dr. Fitzgerald's report was sufficient to establish her claim and inquired about an appeal.

On December 7, 2015 appellant requested an oral hearing before the Branch of Hearings and Review. In support of her claim, she submitted a December 1, 2015 narrative report from Dr. Fitzgerald which reiterated his one percent impairment rating for each upper extremity. She also resubmitted the physician's August 1 and October 22, 2013 reports previously of record.

By decision dated December 30, 2015, OWCP's Branch of Hearings and Review denied appellant's request for an oral hearing, finding that her request had not been made within 30 days of the June 18, 2014 decision. The Branch of Hearings and Review further determined that the issue in the case could equally well be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered to establish permanent impairment to a scheduled member of the body due to her accepted work injury.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides that before review under section 8128(a) of this title, 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

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<sup>2</sup> A.M.A., *Guides* (2009).

her claim before a representative of the Secretary.<sup>3</sup> Section 10.615 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.<sup>4</sup> OWCP regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought, as determined by postmark or other carrier's date marking, and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.<sup>5</sup>

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA,<sup>6</sup> has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.<sup>7</sup> OWCP procedures, which require OWCP to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.<sup>8</sup>

### ANALYSIS

In the present case, appellant requested an oral hearing on December 7, 2015 and OWCP found that the reconsideration request was postmarked on that same date. Her request was made more than 30 days after the date of issuance of OWCP's prior June 18, 2014 merit decision. The time limitation to request an oral hearing from OWCP's Branch of Hearings and Review expired on July 18, 2014, 30 days after the June 18, 2014 decision.<sup>9</sup> Therefore, OWCP properly found in its December 30, 2015 decision that appellant had timely requested an oral hearing or examination of the written record as a matter of right because her request was not made within 30 days of its June 18, 2014 decision.<sup>10</sup>

OWCP then properly exercised its discretion by stating that it had considered the matter and had denied appellant's request for a hearing because the issue of a schedule award could be addressed through a request for reconsideration.<sup>11</sup> The Board has held that the only limitation on OWCP's authority is reasonableness and an abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.<sup>12</sup> In this case, the evidence of

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<sup>3</sup> 5 U.S.C. § 8124(b)(1).

<sup>4</sup> 20 C.F.R. § 10.615.

<sup>5</sup> *Id.* at § 10.616(a).

<sup>6</sup> *Supra* note 1.

<sup>7</sup> *Marilyn F. Wilson*, 52 ECAB 347 (2001).

<sup>8</sup> *Teresa M. Valle*, 57 ECAB 542 (2006).

<sup>9</sup> *T.T.*, Docket No. 15-1397 (issued December 3, 2015).

<sup>10</sup> *Supra* note 5; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

<sup>11</sup> *M.H.*, Docket No. 15-0774 (issued June 19, 2015).

<sup>12</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

record does not indicate that OWCP abused its discretion in its denial of appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her request.<sup>13</sup>

On appeal appellant argues that her physician had established permanent impairment warranting a schedule award and OWCP should have sent her for a second opinion examination. The Board notes that OWCP's June 18, 2014 denial of appellant's schedule award claim was accompanied with appeal rights which provided a timeline and instructions pertaining to the different forms of appeal. Appellant's request for an oral hearing was not made within 30 days and thus, the additional evidence cannot be reviewed by the Board for the first time on appeal which was not before OWCP at the time it issued its June 18, 2014 merit decision.<sup>14</sup>

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for an oral hearing before the Branch of Hearings and Review.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 30, 2015 is affirmed.

Issued: May 17, 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

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<sup>13</sup> *D.P.*, Docket No. 14-308 (issued April 21, 2014); *D.J.*, Docket No. 12-1332 (issued June 21, 2013).

<sup>14</sup> 20 C.F.R § 501.2(c). Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment. *R.L.*, Docket No. 09-1948 (issued June 29, 2010); *B.K.*, 59 ECAB 228, 229-30 (2007); *Candace A. Karkoff*, 56 ECAB 622, 625 (2005); *Linda T. Brown*, 51 ECAB 115, 115-16 (1999); *Paul R. Reedy*, 45 ECAB 488, 490 (1994); see *Leonard E. Redway*, 28 ECAB 242, 246-47 (1977).