

ISSUE

The issue is whether OWCP properly denied appellant's request for a hearing before the Branch of Hearings and Review.

FACTUAL HISTORY

On October 23, 2009 appellant, then a 49-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 17, 2009 she was involved in a physical altercation with a coworker and sustained injuries to her head and left leg.⁴ She stated that C.T., a coworker, assaulted her and she defended herself. Appellant stopped work.

OWCP received various statements from appellant describing the alleged October 17, 2009 incident and the mistreatment she received from her manager. It also received a controversion letter and investigation memorandum from the employing establishment, a Zero Tolerance Workplace Violence Policy bulletin, and various medical records dated October 19 to 30, 2009.

By letter dated November 3, 2009, OWCP advised appellant of the additional factual and medical evidence needed to establish her claim.

Appellant submitted various statements regarding the incident and her disagreements with management, a request for temporary schedule change, letters from the employing establishment regarding disciplinary action for failure to follow instructions and a removal notice, and general information regarding filing a complaint with the Equal Employment Opportunity Commission (EEOC). She also provided a certification of health care provider for employee's serious health condition dated October 30, 2009, medical reports dated September 2 to November 16, 2009, and hospital emergency room records dated October 20 and 28, 2009.

By decision dated December 4, 2009, OWCP denied appellant's claim finding that she had failed to establish fact of injury. It determined that the factual evidence failed to substantiate that the October 17, 2009 incident had occurred as alleged.

On December 29, 2009 OWCP received an appeal request form dated December 22, 2009 requesting a review of the written record before the Branch of Hearings and Review. It also received a December 5, 2009 emergency room report and medical reports dated December 5 to 16, 2009.

Appellant resubmitted hospital records dated October 20 and 28, 2009, medical reports dated September 2 to November 16, 2009, her original traumatic injury claim form, disciplinary letters from the employing establishment, and various statements.

By decision dated April 5, 2010, an OWCP hearing representative affirmed the denial of appellant's traumatic injury claim.

⁴ The record reveals that appellant has three previous claims under File Nos. xxxxxx363, xxxxxx024, and xxxxxx177.

On January 6, 2016 appellant requested an oral hearing.

By decision dated February 1, 2016, OWCP denied appellant's request for an oral hearing. It determined that she was not entitled to an oral hearing as a matter of right as she had previously requested a review of the written record and a decision on review of the written record had been issued on April 5, 2010. OWCP exercised its discretion and denied appellant's request for a hearing as it found that the issue involved in the case could be addressed equally well on reconsideration by submitting evidence which established that she sustained an injury in the performance of duty.

LEGAL PRECEDENT

Any claimant dissatisfied with an OWCP decision shall be afforded an opportunity for either an oral hearing or a review of the written record.⁵ A request for a hearing or review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought.⁶ If the request is not made within 30 days, a claimant is not entitled to a hearing or a review of the written record as a matter of right. OWCP regulations further provide that the claimant must have not previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁷ Although a claimant who has previously sought reconsideration is not, as a matter of right, entitled to a hearing or review of the written record, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing following reconsideration.⁸ Similarly, the Branch of Hearings and Review may exercise its discretion to conduct a hearing or review the written record where a claimant requests a second hearing or review on the written record on the same issue.⁹

ANALYSIS

By decision dated December 4, 2009, OWCP denied appellant's claim because she failed to establish fact of injury. Appellant requested a review of the written record before the Branch of Hearings and Review. By decision dated April 5, 2010, an OWCP hearing representative affirmed the denial of her claim.

On January 6, 2016 OWCP received an appeal request form requesting a hearing before the Branch of Hearings and Review regarding the April 5, 2010 decision. By decision dated February 1, 2016, an OWCP hearing representative determined that appellant was not entitled to a hearing as a matter of right as she had previously requested and received a review of the written record by the Branch of Hearings and Review hearing representative. The Board

⁵ 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.615.

⁶ *Id.* at 10.616(a).

⁷ *Id.*

⁸ *D.E.*, 59 ECAB 438 (2008); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

⁹ *Supra* note 3.

concludes that appellant was not entitled to a hearing as a matter of right as she had previously requested and received a review of the written record by an OWCP hearing representative.¹⁰

In the February 1, 2016 decision, OWCP further exercised its discretion by determining that the issue in the case could be addressed equally well by requesting reconsideration and submitting new evidence relevant to the issue at hand.¹¹ The Board has held that the only limitation on OWCP's discretionary 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 logic and probable deduction from established facts.¹² The Board finds that there is no evidence in the current case to establish that OWCP abused its discretion in denying appellant's request for a hearing under these circumstances.¹³ Accordingly, OWCP acted properly in denying her January 6, 2016 request for a hearing.

On appeal, appellant described the October 17, 2009 employment incident and alleged her manager's misconduct. As these arguments pertain to the merits of the claim, which are not before the Board on the present appeal, the Board lacks jurisdiction to review them. As appellant has not demonstrated that OWCP abused its discretion in denying her January 6, 2016 request for a hearing, the Board affirms the February 1, 2016 denial decision.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for a hearing.

¹⁰ 20 C.F.R. § 10.616(a).

¹¹ *Hubert Jones, Jr.*, *supra* note 8; *Sandra F. Powell*, 45 ECAB 877 (1994).

¹² *See M.C.*, Docket No. 09-2314 (issued August 20, 2010); *Claudia Vazquez*, 52 ECAB 496 (2001).

¹³ *See L.O.*, Docket No. 15-1346 (issued November 17, 2015).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 3, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board