

ISSUE

The issue is whether OWCP properly denied appellant's request for an oral hearing as untimely.

On appeal appellant argues the merits of her case.

FACTUAL HISTORY

On July 25, 2007 appellant, a 40-year-old program analyst, filed a traumatic injury claim (Form CA-1), alleging injuries to her neck and lower back on July 11, 2007 as a result of being struck by another vehicle on her driver's side front tire while exiting a federal building parking lot.

By decision dated September 24, 2007, OWCP denied appellant's claim finding that she failed to establish that the accident occurred in the performance of her regular or specially assigned duties.

In an appeal request form dated August 7, 2015 and postmarked August 20, 2015, appellant requested a telephonic oral hearing before a hearing representative of the Branch of Hearings and Review.

By decision dated September 21, 2015, OWCP denied the request for an oral hearing finding that appellant's request was untimely because it was not made within 30 days of its September 24, 2007 decision. It further indicated that it had exercised its discretion and further denied the request for the reason that the relevant issue of the case could be addressed by requesting reconsideration and submitting evidence not previously considered by OWCP.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides: "Before review under section 8128(a) of this title [relating to reconsideration], a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section 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."⁴

Section 10.615 of Title 20 of the Code of Federal Regulations provides, "A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record."⁵ The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.⁶ OWCP has discretion, however, to grant or

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. § 10.615.

⁶ *Id.* at § 10.616.

deny a request that is made after this 30-day period.⁷ In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.⁸

ANALYSIS

Appellant had 30-calendar days from OWCP's September 24, 2007 decision to request an oral hearing. She filed a request for an oral hearing postmarked August 20, 2015, which was more than 30 days after OWCP issued its September 24, 2007 decision.⁹ Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.¹⁰ For this reason, the Board finds that the request was untimely. Because the application was untimely filed, appellant was not entitled to an oral hearing as a matter of right under section 8124(b)(1) of FECA.

Exercising its discretion to grant an oral hearing, OWCP denied appellant's request finding that she could equally address any issues in her case by requesting reconsideration with OWCP. Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP's September 24, 2007 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for an oral hearing.¹¹

On appeal appellant argues the merits of her case. The Board noted above that it only has jurisdiction over OWCP's September 21, 2015 nonmerit decision which denied her request for an oral hearing and therefore is precluded from conducting a merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely.

⁷ See *G.W.*, Docket No. 10-782 (issued April 23, 2010).

⁸ *Id.*

⁹ Under OWCP regulations and procedures, the timeliness of a request for a hearing is determined on the basis of the postmark of the envelope containing the request. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

¹⁰ See *William F. Osborne*, 46 ECAB 198 (1994).

¹¹ See *Gerard F. Workinger*, 56 ECAB 259 (2005).

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2016
Washington, DC

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

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

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