

July 8, 2015. She attributed the condition to repetitive upper extremity motions while sorting and delivering mail. Appellant did not stop work at the time she filed her claim.

Dr. Andrew Ritting, an attending Board-certified orthopedic surgeon, diagnosed right basilar joint synovitis on July 21, 2015. He attributed the condition to repetitive or excessive upper extremity use at work.

In an August 14, 2015 letter, OWCP advised appellant of the additional medical and factual evidence needed to establish her claim, including a complete history of how and when the condition developed, a detailed description of the work factors claimed to have caused or contributed to the right wrist condition, and a medical report from her attending physician explaining how and why those duties would cause the condition. It afforded appellant 30 days to submit such evidence.

In response, appellant submitted a September 3, 2015 report from Dr. Ritting, noting that appellant continued to experience right thumb pain at work. Dr. Ritting diagnosed osteoarthritis of the right thumb. He recommended a brace and medication.

By decision dated October 13, 2015, OWCP denied appellant's claim, finding that fact of injury had not been established. It found that appellant had failed to provide a complete history of the condition, or a sufficiently detailed description of her work duties.

In a letter dated March 29, 2016 and received by OWCP on March 31, 2016, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. She submitted her March 23, 2016 statement describing the onset of symptoms in May 2015. Appellant described her duties of rolling loaded mail carts weighing 100 to 200 pounds, distributing flats and parcels weighing up to 70 pounds, scanning hundreds of barcodes a day using a handheld scanner, casing delivery routes, fingering and crimping mail into a "U" shape to insert in delivery boxes. Appellant asserted that she had no outside activities other than normal household chores, such as washing dishes and doing laundry.

Appellant also provided November 5, 2015 and March 24, 2016 reports from Dr. Ritting diagnosing primary osteoarthritis of the first metacarpophalangeal joint. Dr. Ritting administered injections. He commented that there was a "causal relationship between her symptoms and her repetitive use of her thumb at work" including "rolling mail containers, distributing mail containers, sorting letters and flats by hand, and repetitive gripping of mail."

By decision dated April 13, 2016, OWCP denied appellant's request for a review of the written record, finding that her March 29, 2016 request was not timely filed within 30 days of OWCP's October 13, 2015 decision.² It exercised its discretion and further denied the request as the issue in the case could be equally well addressed by submitting new, relevant evidence or argument accompanying a request for reconsideration.

² As the postmark of appellant's hearing request was not legible in the case record, OWCP utilized the date of the letter, March 29, 2016, as the date of her hearing request.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before an OWCP hearing representative, states: Before review under section 8128(a) of this title, 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.³ A hearing is a review of an adverse decision by an OWCP hearing representative. Initially, the 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.⁴ 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.⁵ A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision.

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA,⁶ 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.⁷ 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.⁸

ANALYSIS

Appellant claimed that she sustained a right wrist condition in the performance of duty. OWCP denied the claim by decision issued October 13, 2015, finding that fact of injury had not been established. Appellant requested an oral hearing on March 29, 2016. Her request was made more than 30 days after OWCP's October 13, 2015 merit decision. The time limitation to request an oral hearing from OWCP's Branch of Hearings and Review expired on November 12, 2015, 30 days after the October 13, 2015 decision.⁹ Therefore, OWCP properly found in its April 13, 2016 decision that appellant had not timely requested an oral hearing as a matter of right because her request was not made within 30 days of its decision.¹⁰

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

⁵ *James Smith*, 53 ECAB 188 (2001); *see also* 20 C.F.R. § 10.616(a).

⁶ *Supra* note 1.

⁷ *Marilyn F. Wilson*, 52 ECAB 347 (2001); *see also* 20 C.F.R. § 10.616(b).

⁸ *Teresa M. Valle*, 57 ECAB 542 (2006).

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

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

OWCP then properly exercised its discretion by stating that it had considered the matter and had denied appellant's request for a review of the written record because the issue of fact of injury could be addressed through a request for reconsideration.¹¹ 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.¹² In this case, the evidence of record does not support that OWCP abused its discretion in its denial of appellant's request for review of the written record. Accordingly, the Board finds that OWCP properly denied her request.¹³

On appeal appellant contends that she was unaware of the 30-day time limitation for requesting a review of the written record. The Board notes, however, that the 30-day time limitation is clearly described in the appeal rights which accompanied OWCP's October 13, 2015 decision.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124.

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

¹² *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

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

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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