

FACTUAL HISTORY

On January 15, 2015 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 15, 2015 she sustained a headache, sore back, and sore neck after being rear ended by a vehicle. Appellant did not stop work.

In a January 15, 2015 report, Dr. Ronald Weisel, a chiropractor, advised that appellant sustained a work injury when she was rear ended while driving a postal vehicle. He assessed cervical, thoracic, and lumbar strain/sprain and noted that appellant's description of the injury was consistent with the clinical findings.

By letter dated March 4, 2015, OWCP notified appellant that the evidence of record was insufficient to establish her claim. Appellant was advised to submit medical evidence from her attending physician with a diagnosis and an opinion on causal relationship supported by medical rationale. OWCP also noted that chiropractors were only considered physicians under FECA if they diagnosed spinal subluxation as demonstrated by x-ray to exist.

By decision dated April 7, 2015, OWCP found that the January 15, 2015 incident occurred, but denied appellant's claim for failure to establish the medical component of fact of injury. It noted that the medical evidence of record was from a chiropractor and that he was not considered a physician under FECA as he had not diagnosed spinal subluxation as demonstrated by an x-ray.

On August 10, 2015 appellant submitted a request for review of the written record by a hearing representative of OWCP's Branch of Hearings and Review, which it received on August 17, 2015. She submitted additional chiropractic reports from Dr. Weisel.

By decision dated December 18, 2015, OWCP denied appellant's request for review of the written record as untimely. It 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.

On appeal appellant argues that she was unaware that she had to see her primary care physician. She contends that she did not know the protocol for filing a claim and that she was not made aware of the protocol.

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 or her claim before a representative of the Secretary."³

³ 5 U.S.C. § 8124(b)(1).

Section 10.615 of Title 20 of the Code of Federal Regulations provides that 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.⁴ 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.⁵ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.⁶ In such a case, it will determine whether to grant a discretionary hearing or review of the written record and, if not, will so advise the claimant with reasons.⁷

ANALYSIS

The Board finds that OWCP properly determined that appellant's August 10, 2015 request for review of the written record received on August 17, 2015 was untimely filed. Appellant's request was made more than 30 days after the issuance of the April 7, 2015 decision. Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.⁸ For this reason, OWCP properly denied her request as a matter of right.

OWCP proceeded to exercise its discretion in accordance with Board precedent to determine whether to grant review of the written record in this case. It denied appellant's request as any issues could be equally well addressed in her case by submitting evidence not previously considered by OWCP and requesting reconsideration. Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP's April 7, 2015 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for review of the written record.⁹

On appeal appellant argues that she was unaware of the protocol for filing a claim and unaware that she had to submit a medical report from her primary care physician. As explained, the Board does not have jurisdiction over the merits of the claim.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for review of the written record as untimely.

⁴ 20 CFR § 10.615.

⁵ *Id.* at § 10.616.

⁶ *See G.W.*, Docket No. 10-782 (issued April 23, 2010). *See also Herbert C. Holley*, 33 ECAB 140 (1981).

⁷ *Id.* *See also Rudolph Bermann*, 26 ECAB 354 (1975).

⁸ *See William F. Osborne*, 46 ECAB 198 (1994).

⁹ *See Gerard F. Workinger*, 56 ECAB 259 (2005).

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 13, 2016
Washington, DC

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

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

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