

ISSUE

The issue is whether OWCP properly denied appellant's request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124.

FACTUAL HISTORY

On May 15, 1996 appellant, then a 53-year-old asset manager, filed an occupational disease claim (Form CA-2) alleging that she sustained injuries in the performance of her federal duties. In an accompanying statement, she alleged that, although she had rheumatoid arthritis when she was hired by the employing establishment, she was able to perform her duties without limitation until December 1993. Appellant noted that at that time she had prominent joint and tissue swelling in her hands, wrists, elbows, knees and feet. She argued that, while her job did not cause her rheumatoid arthritis, her job duties had aggravated the condition beyond its normal progression. Appellant stated that her job duties increased when the employing establishment eliminated certain employees, and she was required to pull her own files, write or type her own reports, file materials, and put files together. She contended that performing these additional activities had a devastating effect on her health. Appellant noted that she spent 60 percent of her time writing. She argued that the level of her responsibilities and the amount of detail required in her job caused, which in turn exacerbated her arthritis.

Appellant's claim was accepted for unspecified arthropathy, hand, bilateral; pyogenic arthritis of hand, bilateral; chondrocalcinosis due to dicalcium phosphate crystals, hand, bilateral; rheumatoid arthritis, bilateral; and sicca syndrome. She filed a claim for a schedule award. By decision dated October 13, 2006, OWCP granted appellant a schedule award for 83 percent permanent impairment of her right hand and 79 percent permanent impairment of her left hand. Appellant later requested an increased schedule award.

On November 3, 2014 OWCP denied appellant's claim for an additional schedule award.

By letter dated January 13, 2015, postmarked January 20, 2015, and received by OWCP on February 20, 2015, appellant requested an oral hearing before an OWCP hearing representative. On March 17, 2015 OWCP denied appellant's request for a hearing. It noted that appellant's request was untimely filed. OWCP also considered the request at its discretion, and determined that the matter could equally well be addressed by requesting reconsideration and submitting new evidence.

By letter dated March 11, 2016, appellant submitted a letter requesting reconsideration. In the letter, she noted that she had asked for an oral hearing in the past, but never received the March 17, 2015 decision. By letter dated April 12, 2016, OWCP asked appellant to specify which kind of appeal she wished and sent her an appeal request form.

By form dated April 22, 2016 and received by OWCP on May 11, 2016, appellant again requested an oral hearing.

By decision dated May 12, 2016, OWCP denied appellant's request for an oral hearing before an OWCP hearing representative as untimely filed. It also reviewed appellant's request at

its discretion, and denied the request as it determined that the issue in the case could be equally well addressed by requesting reconsideration and submitting new evidence.

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 sent, 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, 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.⁶ 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.⁷

ANALYSIS

Appellant's most recent request for an oral hearing was received by OWCP on May 11, 2016. Her request was made more than 30 days after the date of issuance of OWCP's most recent merit decision on November 3, 2014. The time limitation to request an oral hearing before OWCP expired on December 3, 2014, 30 days after the November 3, 2014 decision.⁸ Therefore, OWCP properly found in its June 13, 2016 decision that appellant was not entitled to an oral hearing as a matter of right because her request was not made within 30 days of its November 3, 2014 decision.⁹

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

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

⁶ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁷ *Teresa M. Valle*, 57 ECAB 542 (2006).

⁸ *T.T.*, Docket No. 15-1397 (issued December 3, 2015).

⁹ 20 C.F.R. § 10.616(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearing and Review of the Written Record*, Chapter 2.1601.4(a) (October 2011).

OWCP then properly exercised its discretion by noting that it had considered the matter and had denied appellant's request for a hearing because the issue of an additional schedule award could equally well be addressed through a request for reconsideration.¹⁰ 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.¹¹ In this case, the evidence of 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.¹²

On appeal appellant requests that the Board review the schedule award issue. However, as explained above, the Board has no jurisdiction to review the merits of the case.¹³

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely filed under 5 U.S.C. § 8124.¹⁴

¹⁰ *M.H.*, Docket No. 15-0774 (issued June 19, 2015).

¹¹ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹² *R.P.*, Docket No. 16-0554 (issued May 17, 2016).

¹³ *C.A.*, Docket No. 16-1442 (issued December 8, 2016).

¹⁴ On appeal, appellant submitted new evidence. The Board cannot review this additional evidence submitted for the first time on appeal. 20 C.F.R. § 501.2(c). Appellant may request a schedule award or increased schedule award at any time based on evidence of 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 (1999); *Paul R. Reedy*, 45 ECAB 488, 490 (1994); *see Leonard E. Redway*, 28 ECAB 242 (1977).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 12, 2016 is affirmed.

Issued: February 17, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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