

**United States Department of Labor
Employees' Compensation Appeals Board**

G.B., Appellant)	
)	
and)	Docket No. 17-1519
)	Issued: November 24, 2017
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Chicago, IL, Employer)	
)	

Appearances:
Michelle Elliott, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 3, 2017 appellant, through his representative, filed a timely appeal from a May 23, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the most recent merit decision, dated November 3, 2016, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ With his request for an appeal, appellant submitted additional evidence. The Board's jurisdiction, however, is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board may not consider this additional evidence for the first time on appeal; 20 C.F.R. § 501.2(c)(1).

ISSUE

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

FACTUAL HISTORY

On September 2, 2016 appellant, then a 54-year-old motor vehicle operator, filed a claim for traumatic injury (Form CA-1). He alleged that on September 1, 2016 he sustained abrasions to the bilateral knees and right ankle during a robbery attempt. A supervisor indicated no lost time or medical expense was incurred or expected.

In a medical report dated September 2, 2016, Dr. Peter Sorokin, Board-certified in occupational medicine, noted that appellant was injured the previous day due to a forward fall to ground level. He diagnosed appellant with bilateral abrasions and contusions of the knees, and a right ankle contusion.

In a continuation of pay nurse's report dated September 14, 2016, a nurse noted that appellant had been out of work due to stress and pain.

By letter dated September 23, 2016, OWCP notified appellant that it had reopened his claim for consideration because he had not yet returned to work in a full-time capacity. It advised him of the evidence needed to establish his claim, noting that he had not yet submitted sufficient medical evidence to establish his claim. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated November 3, 2016, OWCP denied appellant's claim. It found that appellant had not submitted sufficient rationalized medical evidence to establish a causal relationship between the accepted work incident of September 1, 2016 and his diagnosed conditions. OWCP noted that Dr. Sorokin stated that appellant's injuries resulted from a fall, while appellant stated that they resulted from a robbery attempt.

On April 25, 2017 OWCP received an unsigned and undated appeal request form, with check marks, indicating both that appellant deserved an oral hearing and reconsideration.

On April 28, 2017 OWCP received another undated appeal request form. This form indicated that appellant was requesting an oral hearing before an OWCP hearing representative. With his request, he submitted a police report regarding the attempted robbery, as well as additional reports from physicians.

By decision dated May 23, 2017, a representative of OWCP's Branch of Hearings and Review denied appellant's hearing request as untimely filed. He noted that OWCP had issued its decision on November 3, 2016, while appellant's hearing request was received on April 25, 2017, which was more than 30 days after its decision. OWCP found that appellant was not entitled to a hearing as a matter of right, as the request was submitted more than 30 days after its decision. It also considered whether to grant appellant a discretionary hearing, but decided that the issue in this case could equally well be addressed by his requesting reconsideration before OWCP and submitting relevant evidence not previously considered.

LEGAL PRECEDENT

Section 8124(b) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary 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.⁴ Section 10.615 of FECA implementing regulations provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.⁵ The request must be sent within 30 days of the date of the decision for which a hearing is sought.⁶ A claimant is entitled to a hearing or review of the written record as a matter of right if the request is filed within 30 days.⁷

While a claimant may not be entitled to a hearing or review of the written record as a matter of right if the request is untimely, OWCP has the discretionary authority to grant the request and must properly exercise such discretion.⁸

ANALYSIS

The time limitation to request an oral hearing from OWCP's Branch of Hearings and Review expired 30 days after OWCP's November 3, 2016 decision.⁹ Appellant's undated and unsigned hearing request was received by OWCP on April 25, 2017. Therefore, OWCP properly found in its May 23, 2017 decision that appellant was not entitled to an oral hearing as a matter of right because his request was not made within 30 days of the issuance of its November 3, 2016 decision.¹⁰

OWCP's hearing representative then properly exercised her discretion by noting that she had considered the matter and denied appellant's request for a hearing because the issue could equally well 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 The evidence of record does not indicate that OWCP abused its discretion in its denial of appellant's

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. § 10.615.

⁶ *Id.* at § 10.616(a).

⁷ *See Leona B. Jacobs*, 55 ECAB 753 (2004).

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

⁹ *See S.G.*, Docket No. 17-0968 (issued September 13, 2017).

¹⁰ 20 C.F.R. § 10.616(a); *supra* note 8 at Chapter 2.1601.4(a) (October 2011).

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

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

request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her request for a hearing as untimely under section 8124.¹³

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely filed under 5 U.S.C. § 8124.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 24, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy 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

¹³ *R.P.*, Docket No. 16-0554 (issued May 17, 2016).