



## **FACTUAL HISTORY**

On November 5, 2004 appellant, then a 53-year-old mail clerk, filed an occupational disease claim (Form CA-2), alleging that she developed right elbow and left shoulder conditions as a result of the repetitive motions required by her federal employment duties. She also noted that she had been placed in a job that was outside of her medical restrictions. Appellant did not stop work. On November 10, 2004 OWCP accepted her claim for epicondylitis of the right elbow and tendinitis of the left shoulder. Appellant received compensation payments on the periodic rolls from July 28 until September 21, 2013.<sup>3</sup>

On August 5, 2016 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits, based on her attending physician's opinion that her epicondylitis of the right elbow and tendinitis of the left shoulder had resolved with no shoulder pain and no objective medical evidence of residuals. On September 12, 2016 it finalized its decision to terminate appellant's wage-loss compensation and medical benefits.

By letter dated March 5, 2017, received by OWCP on March 17, 2017, appellant requested an oral hearing before a representative of the Branch of Hearings and Review. She argued that she had several other claims accepted by OWCP, and that she still experienced problems with her left shoulder.

By decision dated April 5, 2017, OWCP's hearing representative denied appellant's hearing request as untimely filed. She noted that appellant's hearing request was dated March 5, 2017, which was more than 30 days after OWCP's September 12, 2016 decision. The hearing representative found that appellant was therefore not entitled to a hearing as a matter of right. She also considered whether to grant appellant a discretionary hearing, but decided that the issue in this case could equally well be addressed by appellant requesting reconsideration before OWCP and submitting relevant evidence not previously considered.

## **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before an OWCP hearing representative, provides: 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 or her claim before a representative of the Secretary.<sup>4</sup> 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.<sup>5</sup> A request for either an oral hearing or a review of the written record must be sent, in writing, within

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<sup>3</sup> The record indicates that appellant has other accepted OWCP claims for injuries sustained in her federal employment and was receiving compensation benefits under a December 27, 2004 claim, OWCP File No. xxxxxx218.

<sup>4</sup> 5 U.S.C. § 8124(b)(1).

<sup>5</sup> 20 C.F.R. § 10.615.

30 days of the date of the decision for which the hearing is sought.<sup>6</sup> 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.<sup>7</sup> OWCP procedures, which require it 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.<sup>8</sup>

### ANALYSIS

As noted above, the Board does not have jurisdiction over the merits of this case. The Board finds that appellant was not entitled, as a matter of right, to an oral hearing before an OWCP hearing representative as her request for hearing was untimely filed.

The Board notes that appellant's request for a hearing, was dated March 5, 2017 and received by OWCP on March 17, 2017. As the March 5, 2017 request was made and received more than 30 days after the September 30, 2016 decision, it was untimely. Therefore, appellant was not entitled to a hearing as a matter of right.<sup>9</sup>

Although appellant's request for hearing before an OWCP hearing representative was untimely, OWCP has the discretionary authority to grant the request and it must exercise such discretion.<sup>10</sup>

In its April 5, 2017 decision, OWCP properly considered the matter in relation to the issue involved and that additional evidence and argument could be submitted with a request for reconsideration. The Board has held that the only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.<sup>11</sup> In this case, the evidence of record does not indicate that OWCP abused its discretion by denying appellant's request for an oral hearing.

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<sup>6</sup> *James Smith*, 53 ECAB 188 (2001); 20 C.F.R. § 10.616(a).

<sup>7</sup> *Marilyn F. Wilson*, 52 ECAB 347 (2001).

<sup>8</sup> *Teresa M. Valle*, 57 ECAB 542 (2006); *E.R.*, Docket No. 17-742 (issued June 16, 2017).

<sup>9</sup> *W.C.*, Docket No. 17-0420 (issued June 8, 2017).

<sup>10</sup> See *R.T.*, Docket No. 08-408 (issued December 16, 2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.2(a) (October 2011).

<sup>11</sup> *Samuel R. Johnson*, 51 ECAB 612 (2000). See also *supra* note 8.

The Board finds that the hearing representative properly exercised her discretionary authority in denying appellant's request for a hearing.<sup>12</sup>

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 5, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 2017  
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

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<sup>12</sup> *J.H.*, Docket No. 17-0029 (issued March 2, 2017).