

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

E.K., Appellant)	
)	
and)	Docket No. 17-1265
)	Issued: August 16, 2018
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, North Houston, TX, Employer)	
)	

Appearances:
Appellant, pro se
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 May 22, 2017 appellant filed a timely appeal from a March 2, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision, dated July 27, 2016, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's request for an oral hearing as untimely filed.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 1, 2014 appellant, then a 61-year-old building equipment mechanic, filed a traumatic injury claim (Form CA-1), alleging that on March 31, 2014, the dock door opener/closer fell on his hand, fracturing his right thumb. OWCP accepted his claim for right open phalanx or phalanges and right open fracture of the neck of the metacarpal bone. Appellant underwent three OWCP-approved right thumb/hand surgical procedures, the most recent of which occurred on April 14, 2015. OWCP also paid his wage-loss compensation for periods of temporary total disability. Following his latest surgery, appellant resumed full-time work without restrictions, effective June 30, 2015.²

On February 16, 2016 appellant filed a claim for a schedule award (Form CA-7).

In an October 26, 2015 report, Dr. Benjamin Agana, a Board-certified physiatrist, opined that appellant sustained three percent permanent impairment of the right upper extremity under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³

In a February 3, 2016 report, Dr. Raymond K. Glass, a chiropractor, determined that appellant's right thumb range of motion (ROM) deficit(s) represented 37 percent permanent impairment of the thumb/digit or 15 percent permanent impairment of the hand.

In a May 12, 2016 report, OWCP's district medical adviser concurred with Dr. Agana's rating of three percent permanent impairment of the right upper extremity.

By decision dated July 27, 2016, OWCP granted appellant a schedule award for three percent permanent impairment of the right upper extremity. The award covered a period of 9.36 weeks from October 26 to December 30, 2015.

By appeal request form dated and postmarked August 29, 2016, appellant requested an oral hearing before an OWCP hearing representative. OWCP subsequently received another copy of Dr. Glass' February 3, 2016 impairment rating.

By decision dated March 2, 2017, OWCP's hearing representative denied appellant's request for an oral hearing, finding that the request was untimely filed. He informed appellant that his case had been considered in relation to the issues involved, but that the request was further denied because the issues in this case could equally be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered.

LEGAL PRECEDENT

Section 8124(b)(1) 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

² Appellant's surgeon, Dr. Munir A. Shah, a Board-certified orthopedic and hand surgeon, indicated that he had reached maximum medical improvement (MMI) as of June 29, 2015.

³ A.M.A., *Guides* (6th ed. 2009).

issuance of the decision, to a hearing on his claim before a representative of the Secretary.”⁴ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁵ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by the postmark or other carrier’s date marking and before the claimant has requested reconsideration.⁶ Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may, within its discretionary powers, grant or deny appellant’s request and must exercise its discretion.⁷

ANALYSIS

By decision dated July 27, 2016, OWCP granted appellant a schedule award for three percent permanent impairment of the right upper extremity. Appellant requested an oral hearing by appeal request form dated and postmarked August 29, 2016. Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.⁸ As appellant’s request for hearing was submitted more than 30 days after the July 27, 2016 OWCP decision, it was untimely filed. He was, therefore, not entitled to an oral hearing as a matter of right.

OWCP has the discretionary power to grant an oral hearing when a claimant is not entitled to one as a matter of right. It exercised this discretion in its March 2, 2017 decision, finding that appellant’s issue could equally be addressed by requesting reconsideration and submitting additional evidence. This basis for denying his request for a hearing is a proper exercise of OWCP’s authority.⁹ Accordingly, the Board finds that OWCP properly denied appellant’s request for an oral hearing as untimely filed.

On appeal appellant asserts that Dr. Glass provided a more accurate determination of his right thumb impairment and his report should be used to determine the impairment rating. As explained above, the Board lacks jurisdiction over the merits of the claim.

CONCLUSION

The Board finds that OWCP properly denied appellant’s request for an oral hearing as untimely filed.

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. §§ 10.616, 10.617.

⁶ *Id.* at § 10.616(a).

⁷ *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

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

⁹ *Mary B. Moss*, 40 ECAB 640, 647 (1989).

ORDER

IT IS HEREBY ORDERED THAT the March 2, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 16, 2018
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