

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

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**M.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Macon, GA, Employer**

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**Docket No. 18-0652  
Issued: August 1, 2018**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 5, 2018 appellant filed a timely appeal from an October 11, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated December 4, 2013, to the filing of this appeal, the Board lacks jurisdiction to review the merits of the case pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

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

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On October 22, 2013 appellant, then a 41-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on September 7, 2013 she injured her shoulder in the performance of duty. She stopped work on October 15, 2013.

By decision dated December 4, 2013, OWCP denied appellant's traumatic injury claim. It found that she had not submitted sufficient factual evidence to establish the occurrence of the alleged September 7, 2013 employment incident. OWCP further noted that the medical evidence failed to support that she sustained a diagnosed condition due to the claimed September 7, 2013 incident.

Appellant, on an appeal request form dated August 9, 2017 and postmarked August 10, 2017, requested an oral hearing before an OWCP hearing representative.

By decision dated October 11, 2017, OWCP determined that appellant was not entitled to a hearing as a matter of right under section 8124(b) because her August 10, 2017 hearing request was not made within 30 days of its December 4, 2013 merit decision. OWCP considered whether to grant a discretionary hearing, but determined that the matter could equally well be addressed by appellant requesting reconsideration and providing new evidence supporting her assertion that she sustained an employment injury.

## **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>2</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>3</sup> 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.<sup>4</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.<sup>5</sup>

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<sup>2</sup> *Id.* at § 8124(b)(1).

<sup>3</sup> 20 C.F.R. § 10.615.

<sup>4</sup> *Id.* at § 10.616(a); *G.W.*, Docket No. 10-0782 (issued April 23, 2010); *James Smith*, 53 ECAB 188 (2001).

<sup>5</sup> *See S.M.*, Docket No. 17-1876 (issued January 24, 2018); *R.T.*, Docket No. 08-0408 (issued December 16, 2008).

OWCP has discretion to grant or deny a request that is made after the 30-day period for requesting an oral hearing or review of the written record and must properly exercise such discretion.<sup>6</sup>

### **ANALYSIS**

The Board finds that OWCP properly determined that appellant's request for an oral hearing was untimely filed. OWCP's regulations provide that the hearing request must be sent within 30 days of the date of the decision for which a hearing is sought. Because her request was postmarked August 10, 2017, more than 30 days after OWCP's December 4, 2013 decision, it was untimely filed and she was not entitled to an oral hearing as a matter of right.

The Board further finds that OWCP properly exercised its discretion in denying appellant's request for an oral hearing before an OWCP hearing representative by determining that the issue in the case could be addressed equally well through a request for reconsideration and the submission of new evidence relevant to her assertion that she sustained an employment injury on the date and time alleged.<sup>7</sup> The Board has held that the only limitation on OWCP's discretionary 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 logic and probable deduction from established facts.<sup>8</sup> In this case, the evidence of record does not establish that OWCP abused its discretion in denying appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her oral hearing request.<sup>9</sup>

### **CONCLUSION**

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

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<sup>6</sup> 20 C.F.R. § 10.616(b); *see also F.M.*, Docket No. 18-0161 (issued May 18, 2018).

<sup>7</sup> *See D.P.*, Docket No. 14-0308 (issued April 21, 2014); *D.J.*, Docket No. 12-1332 (issued June 21, 2013).

<sup>8</sup> *See R.G.*, Docket No. 16-0994 (issued September 9, 2016); *Teresa M. Valle*, 57 ECAB 542 (2006).

<sup>9</sup> *See J.O.*, Docket No. 17-0789 (issued May 15, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 11, 2017 is affirmed.

Issued: August 1, 2018  
Washington, DC

Christopher J. Godfrey, 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