

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

M.W., Appellant)
and) Docket No. 17-1607
U.S. POSTAL SERVICE, POST OFFICE,) Issued: January 8, 2018
Burlingame, CA, Employer)

)

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 18, 2017 appellant filed a timely appeal from a January 19, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated August 26 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 claim.²

ISSUE

The issue is whether a representative of OWCP's Branch of Hearings and Review properly denied appellant's request for an oral hearing as untimely filed.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal, after the January 19, 2017 decision. The Board's jurisdiction is limited to evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On June 20, 2016 appellant, then a 50-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she developed left hand and shoulder conditions due to factors of her federal employment, specifically feeding mail for half-an-hour at a steady speed. She indicated that she first became aware of the condition on June 5, 2016 and related it to factors of her federal employment on July 21, 2016. OWCP assigned File No. xxxxxx319 to this claim.

In a June 30, 2016 report, Dr. Adam M. Bellamy, a Board-certified family practitioner, indicated that appellant had a work-related injury and needed an ergonomic work evaluation.

On July 3, 2016 appellant filed a traumatic injury claim (Form CA-1) alleging that she sustained a left shoulder and upper arm injury on June 5, 2016 as a result of performing a “repetitive job” at work. OWCP assigned File No. xxxxxx513 to this claim.

In a July 6, 2016 letter, the employing establishment controverted appellant’s claim and noted that she had an existing occupational disease claim under File No. xxxxxx319 for the same part of the body.

On July 8 and 13, 2016 OWCP advised appellant that the evidence then of record was insufficient to establish entitlement to FECA benefits. It afforded her at least 30 days to submit additional factual and medical evidence in support of her claim.

On August 5, 2016 OWCP informed appellant that it had created two separate cases for the same injury. It, therefore, deleted case File No. xxxxxx513 and transferred the evidence of record to the current File No. xxxxxx319, the occupational disease claim.

By decision dated August 26, 2016, OWCP denied appellant’s claim, finding that she failed to submit medical evidence containing a diagnosis in connection with the accepted employment factors and, thus, she failed to establish fact of injury.

In November 2016, appellant submitted the appeal request form that accompanied OWCP’s August 26, 2016 decision. The form was dated November 16, 2016 and requested an oral hearing by a representative of the Branch of Hearings and Review. The envelope was postmarked November 17, 2016. Appellant also submitted a November 16, 2016 statement, as well as additional medical evidence in support of her claim.

By decision dated January 19, 2017, a hearing representative denied appellant’s request for an oral hearing, finding that appellant’s request was not made within 30 days of OWCP’s August 26, 2016 decision. As such, appellant was not entitled to a hearing as a matter of right. The hearing representative considered a discretionary hearing, but declined to grant one, noting that appellant could instead file for reconsideration and submit new evidence establishing an employment-related injury.

LEGAL PRECEDENT

A claimant, injured on or after July 4, 1966, who has received a final adverse decision by OWCP, may obtain a hearing by writing to the address specified in the decision.³ The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.⁴ The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁵ If the request is not made within 30 days, a claimant is not entitled to a hearing as a matter of right. However, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing.⁶

ANALYSIS

OWCP issued its merit decision on August 26, 2016. Appellant had 30 days to request a hearing, but she waited more than two and a half months. The hearing request was postmarked November 17, 2016. The regulations clearly specify that “[t]he hearing request must be sent within 30 days ... of the date of the decision for which a hearing is sought.”⁷ As appellant’s request was untimely filed, OWCP’s hearing representative properly determined that she was not entitled to a hearing as a matter of right. The hearing representative also exercised her discretion and further denied appellant’s request as the relevant issue could be equally well addressed by requesting reconsideration before OWCP. The Board finds that the hearing representative properly exercised her discretionary authority in denying appellant’s request.⁸

CONCLUSION

The Board finds that a representative of OWCP’s Branch of Hearings and Review properly denied appellant’s request for an oral hearing as untimely filed.

³ 20 C.F.R. § 10.616(a).

⁴ *Id.*

⁵ *Id.*

⁶ 5 U.S.C. §§ 8124(b)(1) and 8128(a); *Hubert Jones Jr.*, 57 ECAB 467, 472-73 (2006); *Herbert C. Holley*, 33 ECAB 140 (1981).

⁷ 20 C.F.R. § 10.616(a).

⁸ *Mary B. Moss*, 40 ECAB 640, 647 (1989). 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 deductions from known facts. See *André Thyratron*, 54 ECAB 257, 261 (2002).

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2018
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board