

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

G.S., Appellant)	
)	
and)	Docket No. 18-0388
)	Issued: July 19, 2018
U.S. CAPITOL POLICE, Washington, DC,)	
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 December 18, 2017 appellant filed a timely appeal from an August 2, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision dated March 27, 2017, 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.²

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.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant filed a timely request for oral argument. After exercising its discretion, by order dated May 16, 2018, the Board denied appellant's request, finding that his arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 18-0388 (issued May 16, 2018).

FACTUAL HISTORY

On January 13, 2017 appellant, then a 71-year-old firearms instructor, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he developed left knee and leg swelling, as well as pain due to prolonged standing while working at the firing range in the performance of duty. He did not stop work following the alleged incident.

In support of his claim appellant submitted January 15, 2017 visit summary sheets from Olabisi O. Oladapo, a certified physician assistant, diagnosing left knee pain, and a January 15, 2017 x-ray interpretation.

In a January 24, 2017 authorization for examination and/or treatment (Form CA-16), M.S., an employing establishment official, authorized treatment for the claimed January 13, 2017 employment incident.

On January 30, 2017 OWCP received a January 15, 2017 report from Dr. Emily H. Hsu, an examining Board-certified internist, diagnosing left knee pain. Under history of injury, Dr. Hsu noted that appellant complained of throbbing and aching left knee pain for the prior two weeks, which was aggravated three days prior by prolonged standing and walking at the firing range.

On January 31, 2017 appellant was seen by Dr. Alan Nagel, an examining Board-certified orthopedic surgeon. Dr. Nagel provided examination findings, noted a January 13, 2017 work injury, reviewed diagnostic testing, and diagnosed unspecified left knee dislocation.

In a February 8, 2017 development letter, OWCP notified appellant that his claim was initially administratively handled to allow medical payments, as his claim appeared to involve a minor injury resulting in minimal or no lost time from work. However, the merits of appellant's claim had not been formally considered and his claim had been reopened for consideration of the merits because he had submitted a medical authorization form. OWCP informed him that the evidence of record was insufficient to establish his traumatic injury claim. It also advised appellant of the type of medical and factual evidence needed and afforded him 30 days to submit additional evidence.

Subsequent to the February 8, 2017 letter, OWCP received page 2 of the Form CA-16 dated January 31, 2017 from Dr. Nagel and treatment notes from Potomac Valley Orthopedic Associates dated January 31 and February 21, 2017.

By decision dated March 27, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the January 13, 2017 incident occurred as alleged.

Appellant subsequently submitted a supplemental statement dated April 27, 2017 as well as physical therapy notes and reports from Dr. Nagel dated January 31, February 21 and March 7, 2017.

On April 27, 2017 appellant requested an oral hearing before an OWCP hearing representative. The request was signed and dated April 27, 2017.

By decision dated August 2, 2017, OWCP's Branch of Hearings and Review denied appellant's hearing request as untimely filed. It found that OWCP had issued its decision on March 27, 2017, while appellant's hearing request was signed and dated April 27, 2017, more than 30 days after OWCP's decision. The Branch of Hearings and Review concluded that appellant was not entitled to a hearing as a matter of right, as the request was submitted more than 30 days after OWCP's decision. It also considered whether to grant appellant a discretionary hearing, but determined that the issue in this case could equally well be addressed by requesting reconsideration before OWCP's district office and submitting 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.³

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.⁴ 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.⁵ 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.⁶

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. In such a case, it will so advise the claimant with reasons.⁷

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. The 30th day following March 27, 2017 was Wednesday, April 26, 2017. Because appellant's request was signed, dated

³ *Id.* at § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

⁵ *M.G.*, Docket No. 18-0099 (issued April 26, 2018); *G.W.*, Docket No. 10-0782 (issued April 23, 2010); *James Smith*, 53 ECAB 188 (2001); *id.* at § 10.616(a).

⁶ *See S.M.*, Docket No. 17-1876 (issued January 24, 2018); *R.T.*, Docket No. 08-0408 (issued December 16, 2008).

⁷ *M.G.*, *supra* note 5; *G.W.*, *supra* note 5.

and received on April 27, 2017, more than 30 days after OWCP's March 27, 2017 decision, it was untimely filed and he was not entitled to an oral hearing as a matter of right.⁸

Although appellant's request for an oral hearing was untimely, OWCP has the discretionary authority to grant the request and it must exercise such discretion.⁹ OWCP's Branch of Hearings and Review properly exercised its discretion in denying appellant's hearing request as the issue of whether appellant established that the January 13, 2017 employment incident occurred as alleged could equally well be addressed by a request for reconsideration before OWCP. The Board finds that the Branch of Hearings and Review properly exercised its discretionary authority in denying appellant's request for a hearing.¹⁰ 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.¹¹ In this case, the evidence of record does not establish that OWCP abused its discretion in denying appellant's request for a hearing. Accordingly, the Board finds that OWCP properly denied appellant's hearing request as untimely filed.

On appeal appellant argues that he did not receive the developmental letter requesting information from his physician. Once he learned that medical information was required he immediately submitted it. As noted above, however, the only issue presently before the Board is whether OWCP properly denied appellant's request for an oral hearing as untimely. As the Board lacks jurisdiction to review the underlying merits of appellant's claim, it cannot review appellant's arguments regarding his traumatic injury claim on appeal.¹²

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.

⁸ See *B.H.*, Docket No. 13-1545 (issued December 12, 2013).

⁹ *F.M.*, Docket No. 18-0161 (issued May 18, 2018); *R.V.*, Docket No. 17-1286 (issued December 5, 2017).

¹⁰ *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).

¹¹ *F.M.*, *supra* note 9; *Samuel R. Johnson*, 51 ECAB 612 (2000).

¹² The Board notes that a Form CA-16 authorization for examination and/or treatment was issued by the employing establishment on January 24, 2017. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).

ORDER

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

Issued: July 19, 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