

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

S.R., Appellant)	
)	
and)	Docket No. 18-0191
)	Issued: June 6, 2018
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS HEALTH ADMINISTRATION,)	
Billings, MT, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 3, 2017 appellant filed a timely appeal from a June 1, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated April 14, 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 the claim.²

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted new evidence on appeal. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. Thus, the Board is precluded from reviewing the new evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On February 25, 2016 appellant, then a 61-year-old housekeeping aid, filed a traumatic injury claim (Form CA-1) alleging that on February 10, 2016, while in the performance of duty, packs of sheets fell off a rack, hit him in the back of his neck and head, and caused his face to hit a metal hamper. He claimed injury to his neck and teeth. The employing establishment controverted the claim alleging that appellant was intoxicated at the time of the incident. Appellant stopped work February 10, 2016 and returned to work February 12, 2016.

On March 9, 2016 OWCP received a February 15, 2016 statement from M.P.³ and a February 25, 2016 statement from appellant.

By development letter dated March 11, 2016, OWCP advised appellant of the deficiencies in his claim and requested additional factual and medical evidence. Appellant was afforded 30 days to submit the requested evidence and respond to OWCP's questionnaire.

OWCP received a March 16, 2016 statement from C.H., a coworker, but no medical evidence was received.

By decision dated April 14, 2016, OWCP accepted that the February 10, 2016 incident occurred as alleged, but denied the claim finding that the medical component of fact of injury had not been established. Specifically, it indicated that no medical evidence had been received.

On August 12, 2016 OWCP received additional evidence from appellant.

In a February 3, 2017 letter, appellant stated: "in my recent appeal concerning the workmans comp case, I am asking for a verbal/oral consultation." He noted that he had limited education or understanding of dental treatment and therefore wanted to designate a representative, Gay Feeney, to sit in on the hearing and speak on his behalf.

In an April 20, 2017 telephone report (CA-110), appellant indicated that he submitted a request for an oral hearing. OWCP informed him that there was no request for a hearing, only his request for an oral consultation (dental).

On April 28, 2017 appellant telephoned OWCP and indicated that he was requesting an oral hearing.

In an appeal request form dated April 19, 2017 and received by OWCP on May 4, 2017, appellant requested an oral hearing before an OWCP hearing representative.

By decision dated June 1, 2017, a representative of OWCP's Branch of Hearings and Review denied appellant's hearing request. She found that it was untimely filed and, after exercising her discretion, further found that the issue in the case could equally well be addressed through the reconsideration process.

³ M.P.'s position is unclear from the record.

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 issuance of the decision, to a hearing on his or her claim before a representative of the Secretary.⁴ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide 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 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 Its procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).⁸

ANALYSIS

A request for a hearing or review of the written record must be made within 30 days after the date of the issuance of a final OWCP decision. Appellant's hearing request was dated April 19, 2017 and received by OWCP on May 4, 2017, more than 30 days after the issuance of OWCP's April 14, 2016 decision. Because the hearing request date was more than 30 days after the date of OWCP's April 14, 2016 decision, the Board finds that the request was untimely filed and he was not entitled to an oral hearing as a matter of right.⁹

The Board further finds that OWCP properly exercised its discretion in denying appellant's request for a hearing by determining that the issue in the case could be addressed equally as well by requesting reconsideration and submitting new evidence relevant to the issue at hand.¹⁰ The Board has held that the only limitation on OWCP's authority is reasonableness and an 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 deduction from established facts.¹¹ In this case, the evidence of record does not indicate that OWCP abused its

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 See *R.T.*, Docket No. 08-0408 (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).

⁹ The 30-day period for determining the timeliness of an employee's request for an oral hearing or review commences the day after the issuance of OWCP's decision. See *Donna A. Christley*, 41 ECAB 90 (1989).

¹⁰ *M.H.*, Docket No. 15-0774 (issued June 19, 2015).

¹¹ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

discretion in its denial of appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied his request for a hearing as untimely filed under section 8124.¹²

On appeal appellant contends that he was hurt on the job and that he has documented everything. However, as previously noted, the Board does not have jurisdiction over the merits of this claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 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

¹² *R.P.*, Docket No. 16-0554 (issued May 17, 2016).