



## **ISSUE**

The issue is whether OWCP has abused its discretion when it denied appellant's March 3, 2018 request for an oral hearing before an OWCP hearing representative as untimely filed, pursuant to 5 U.S.C. § 8124(b).

## **FACTUAL HISTORY**

On December 27, 2016 appellant, then a 39-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, when lifting a tray of raw mail from the rear of her vehicle on that date, she sustained a strain to her lower back while in the performance of duty. She did not stop work.

By decision dated February 16, 2017, OWCP accepted the claim for strain of muscle, fascia, and tendon of lower back. Appellant subsequently received wage-loss compensation for temporary total disability.

On August 8, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) for the period from July 22 to August 4, 2017.

By development letter dated August 21, 2017, OWCP advised appellant that it had not received evidence to support her claim for compensation for the period from July 22 to August 4, 2017. It further noted that the evidence of record indicated that a light/limited-duty assignment was available within appellant's medical restrictions with the employing establishment for the period of claimed lost time and requested evidence to support why she did not work the assignment and was now seeking compensation. OWCP afforded appellant 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted a series of medical reports dated June 8 through October 2, 2017 from Dr. William J. Lichtenfeld, a Board-certified physiatrist and pain medicine specialist, who diagnosed low back pain, degeneration of lumbosacral intervertebral disc, and displacement of lumbar intervertebral disc without myelopathy. Dr. Lichtenfeld advised that appellant had an underlying facet hypertrophy which had hindered her improvement and recommended facet injections. He opined that appellant's lumbar conditions were consistent with her accepted work injury "being chronic in nature following an initial strain injury."

On August 21, 2017 appellant filed a subsequent claim for wage-loss compensation (Form CA-7) for the period from August 4 to 8, 2017.

The record establishes that appellant voluntarily resigned from federal employment effective August 7, 2017 and gave no reason for her resignation.

By decision dated November 13, 2017, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish total disability for the period from July 22 to August 8, 2017 causally related to her accepted employment injury.

By appeal request form dated November 19, 2017, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The envelope was postmarked March 3, 2018. Appellant also submitted medical evidence and a narrative statement dated November 19, 2017 in support of her claim.

By decision dated March 23, 2018, OWCP's hearing representative denied appellant's request for an oral hearing finding that it was untimely filed as it was postmarked March 3, 2018, more than 30 days after OWCP's November 13, 2017 decision. As such, appellant was not entitled to a hearing as a matter of right. The hearing representative exercised her discretion and reviewed the request, but determined that the issue could equally well be addressed by appellant requesting reconsideration from the district office and submitting new evidence establishing entitlement to disability compensation for the period claimed.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides: "Before review under section 8128(a) of this title [relating to reconsideration], 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] claim before a representative of the Secretary."<sup>4</sup>

Section 10.615 of Title 20 of the Code of Federal Regulations provides, "A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record."<sup>5</sup> 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.<sup>6</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>7</sup> In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.<sup>8</sup>

### **ANALYSIS**

The Board finds that OWCP has not abused its discretion when it denied appellant's March 3, 2018 hearing request before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

Appellant requested an oral hearing utilizing the appeal request form that accompanied OWCP's November 13, 2017 merit decision. She had 30-calendar days from OWCP's November 13, 2017 decision, or until December 13, 2017, to request an oral hearing before OWCP's Branch of Hearings and Review. As the postmark date of her appeal request form was more than 30 days after OWCP issued its November 13, 2017 decision, appellant was not entitled

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<sup>4</sup> 5 U.S.C. § 8124(b)(1).

<sup>5</sup> 20 C.F.R. § 10.615.

<sup>6</sup> *Id.* at § 10.616.

<sup>7</sup> *See G.W.*, Docket No. 10-0782 (issued April 23, 2010).

<sup>8</sup> *Id.*

to an oral hearing as a matter of right.<sup>9</sup> Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.<sup>10</sup> Because the application was not timely filed, appellant was not entitled to an oral hearing as a matter of right.

The Board 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 well by requesting reconsideration and submitting new evidence relevant to the issue of disability for the claimed period.<sup>11</sup> The Board has held that 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.<sup>12</sup> Herein, the evidence of record does not indicate that OWCP abused its discretion by denying appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her oral hearing request.<sup>13</sup>

### CONCLUSION

The Board finds that OWCP has not abused its discretion when it denied appellant's March 3, 2018 hearing request before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124.

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<sup>9</sup> Under OWCP's regulations and procedures, the timeliness of a request for a hearing is determined on the basis of the postmark of the envelope containing the request. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011). If the postmark is not legible, the request will be deemed timely unless OWCP has kept evidence of date of delivery on the record reflecting that the request is untimely. *Id.*

<sup>10</sup> See *William F. Osborne*, 46 ECAB 198 (1994).

<sup>11</sup> *D.E.*, 59 ECAB 438, 442-43 (2008); *J.C.*, 59 ECAB 206, 210-11 (2007).

<sup>12</sup> See *R.G.*, Docket No. 16-0994 (issued September 9, 2016); *Teresa M. Valle*, 57 ECAB 542 (2006).

<sup>13</sup> See *J.O.*, Docket No. 17-0789 (issued May 15, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 23, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2019  
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board