



## **FACTUAL HISTORY**

On August 6, 2014 appellant, then a 56-year-old military pay technician, filed a traumatic injury claim (Form CA-1) for a left foot/ankle fracture that allegedly occurred while in the performance of duty on July 25, 2014 when she stepped to avoid some ice on the floor at the employment establishment. She stopped work on July 25, 2014 and resumed on July 28, 2014.

By decision dated September 24, 2014, OWCP accepted that the July 25, 2014 incident occurred as alleged. However, it denied appellant's claim because she had not provided sufficient evidence to establish a medical diagnosis in connection with the accepted employment incident and, therefore, she did not satisfy the requirements to prove an injury pursuant to FECA.

By postmark dated October 17, 2014, appellant timely requested a review of the written record by a representative of OWCP's Branch of Hearings and Review, and submitted additional medical evidence, which included a diagnosis of left forth metatarsal stress fracture.

By decision dated April 7, 2015, an OWCP hearing representative affirmed the September 24, 2014 decision as modified to find she had not established that her diagnosed left foot stress fracture was causally related to the accepted July 25, 2014 employment incident.

On March 27, 2017 appellant requested reconsideration before OWCP. On June 8, 2017 OWCP received her May 31, 2017 request for review of the written record. The September 24, 2014 decision date was printed at the top of the form.

By decision dated June 22, 2017, OWCP denied appellant's March 27, 2017 request for reconsideration, finding that it was untimely filed and did not demonstrate clear evidence of error with respect to the hearing representative's April 7, 2015 decision.

On October 26, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. On November 10, 2017 she resubmitted her May 31, 2017 request for a review of the written record.

By decision dated January 8, 2018, OWCP determined that appellant was not entitled to either an oral hearing or a review of the written record as a matter of right because her requests were untimely. The hearing representative further noted that she had previously received a review of the written record and following the hearing representative's April 7, 2015 decision, she had also requested reconsideration. The hearing representative also considered whether to grant a discretionary hearing, and advised appellant that, in light of OWCP's latest June 22, 2017 nonmerit decision, she could instead pursue the appeal rights that accompanied that decision.

## **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>3</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>4</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>5</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>6</sup> 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>7</sup>

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.<sup>8</sup> Specifically, the Board has held that OWCP has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to FECA which provided the right to a hearing,<sup>9</sup> when the request is made after the 30-day period for requesting a hearing,<sup>10</sup> when the request is for a second hearing on the same issue,<sup>11</sup> and when the request is made after a reconsideration request was previously submitted.<sup>12</sup> In these instances, OWCP will determine whether a discretionary hearing should be granted, and if not, will so advise the claimant with reasons.<sup>13</sup>

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<sup>3</sup> *Id.* at § 8124(b)(1).

<sup>4</sup> 20 C.F.R. § 10.615.

<sup>5</sup> *Id.* at § 10.616(a); *G.W.*, Docket No. 10-0782 (issued April 23, 2010); *James Smith*, 53 ECAB 188 (2001).

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

<sup>7</sup> 20 C.F.R. § 10.616(b); *see also F.M.*, Docket No. 18-0161 (issued May 18, 2018).

<sup>8</sup> *Henry Moreno*, 39 ECAB 475, 482 (1988).

<sup>9</sup> *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

<sup>10</sup> *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

<sup>11</sup> *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

<sup>12</sup> *R.H.*, Docket No. 07-1658 (issued December 17, 2007); *S.J.*, Docket No. 07-1037 (issued September 12, 2007). Section 10.616(a) of OWCP's regulations provides that the claimant seeking a hearing must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision. 20 C.F.R. § 10.616(a).

<sup>13</sup> *See supra* note 9.

## ANALYSIS

The Board finds that OWCP properly determined that appellant's requests for an oral hearing and a review of the written record were untimely filed.<sup>14</sup> 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 appellant's request for an oral hearing was postmarked October 26, 2017, more than 30 days after OWCP's September 24, 2014 decision, it was untimely filed and she was not entitled to an oral hearing as a matter of right. Similarly, her request for a review of the written record was dated May 31, 2017, which was more than 30 days after OWCP's September 24, 2014 decision. As such, appellant's request for a review of the written record was also untimely filed and she was not entitled to a review of the written record as a matter of right.

The Board further finds that appellant's requests for an oral hearing and a review of the written record were made after a previous April 7, 2015 review of the written record on the same issue, which upheld OWCP's September 24, 2014 decision. Moreover, appellant had previously submitted a reconsideration request on March 27, 2017, which was denied by decision dated June 22, 2017. The hearing representative noted that appellant could pursue the appeal rights that accompanied OWCP's June 22, 2017 decision. As noted above, the Board has held that OWCP has the discretion to grant or deny a hearing request.<sup>15</sup> As such the Board finds that appellant was not entitled to an oral hearing or a review of the written record as a matter of right.<sup>16</sup>

OWCP properly exercised its discretion in denying appellant's requests for an oral hearing and a review of the written record.<sup>17</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>18</sup> In this case, the evidence of record does not establish that OWCP abused its discretion in denying appellant's requests for an oral hearing and a review of the written record. Accordingly, the Board finds that OWCP properly denied her oral hearing and review of the written record requests.<sup>19</sup>

## CONCLUSION

The Board finds that OWCP properly denied appellant's requests for a review of the written record and an oral hearing pursuant to 5 U.S.C. § 8124(b).

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<sup>14</sup> See *M.T.*, Docket No. 18-0652 (issued August 1, 2018).

<sup>15</sup> *Supra* notes 11-12.

<sup>16</sup> *Id.*

<sup>17</sup> See *D.P.*, Docket No. 14-0308 (issued April 21, 2014); *D.J.*, Docket No. 12-1332 (issued June 21, 2013).

<sup>18</sup> See *R.G.*, Docket No. 16-0994 (issued September 9, 2016); *Teresa M. Valle*, 57 ECAB 542 (2006).

<sup>19</sup> See *J.O.*, Docket No. 17-0789 (issued May 15, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 8, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 11, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy 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