

2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the case.

ISSUE

The issue is whether OWCP abused its discretion when it denied appellant's October 25, 2017 request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On August 5, 2016 appellant, then a 56-year-old voucher examiner, filed a traumatic injury claim (Form CA-1), alleging that on July 31, 2016 she aggravated her knees when she tripped and fell over a street sign while in the performance of duty. She did not stop work.

By decision dated June 2, 2017, OWCP denied the claim finding that appellant had not been injured while in the performance of duty. It found that she was not on the clock or on agency premises when the injury occurred.

By appeal request form dated and postmarked October 25, 2017, appellant requested an oral hearing before an OWCP hearing representative. OWCP received additional evidence.

By decision dated December 7, 2017, OWCP's hearing representative found that appellant's request for an oral hearing was untimely filed. She informed appellant that her case had been considered in relation to the issues involved, but that the request was denied because the issues in the case could equally well be addressed by requesting reconsideration from OWCP 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 that "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."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

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Id.* at § 8124(b)(1).

⁵ 20 C.F.R. §§ 10.616, 10.617.

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

ANALYSIS

The Board finds that OWCP did not abuse its discretion when it denied appellant's October 25, 2017 request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

The Board initially finds that OWCP properly determined that appellant's request for an oral hearing was untimely filed. OWCP's regulations provide that the request for an oral hearing must be filed within 30 days of the date of the decision for which a review is sought.⁸ Because appellant's request was postmarked October 25, 2017, more than 30 days after OWCP's June 2, 2017 decision, it was untimely filed and she was not entitled to an oral hearing as a matter of right.⁹

The Board further finds that OWCP's hearing representative properly exercised her discretion in denying appellant's request for an oral hearing by determining that the issue in the case could be addressed equally well through a request for reconsideration and the submission of new evidence relevant to the issues at hand.¹⁰ 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.¹¹ 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.¹²

On appeal appellant argues the merits of her claim. The only issue before the Board, however, is whether OWCP abused its discretion when it denied her October 25, 2017 request for

⁶ *Id.* at § 10.616(a).

⁷ 20 C.F.R. § 10.616(b); *see also F.M.*, Docket No. 18-0161 (issued May 18, 2018); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁸ *See S.M.*, Docket No. 17-1876 (issued January 24, 2018); *R.T.*, Docket No. 08-0408 (issued December 16, 2008).

⁹ *See J.A.*, Docket No. 17-1744 (issued January 9, 2018).

¹⁰ *See B.H.*, Docket No. 18-0874 (issued October 10, 2018); *see also D.P.*, Docket No. 14-0308 (issued April 21, 2014); *D.J.*, Docket No. 12-1332 (issued June 21, 2013).

¹¹ *See B.H.*, *id.*; *R.G.*, Docket No. 16-0994 (issued September 9, 2016); *Teresa M. Valle*, 57 ECAB 542 (2006).

¹² *See J.O.*, Docket No. 17-0789 (issued May 15, 2018).

an oral hearing as untimely filed. As the Board lacks jurisdiction to review the underlying merits of appellant's claim, it cannot review her arguments regarding her traumatic injury claim.¹³

CONCLUSION

The Board finds that OWCP did not abuse its discretion when it denied appellant's October 25, 2017 request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 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

¹³ See *G.S.*, Docket No. 18-0388 (issued July 19, 2018).