

FACTUAL HISTORY

On June 20, 2017 appellant, then a 47-year-old inventory management specialist, filed an occupational disease claim (Form CA-2) for severe nasal and ocular allergies, which she attributed to workplace exposure to dust mites and other environmental allergens. She identified May 10, 2017 as the date she first became aware of her claimed condition and realized that it was caused or aggravated by her employment. Appellant continued to perform her regular duties, but was moved to a work area without carpet on or about May 19, 2017.

In a June 29, 2017 development letter, OWCP advised appellant to submit additional factual information and medical evidence in support of her claim for FECA benefits. It afforded her 30 days to submit the requested information.

In a May 10, 2017 letter, Dr. Michael J. Prematta, a Board-certified internist and allergist/immunologist, advised that appellant had severe nasal and ocular allergies that were worsened by dust mites, along with several other environmental allergens. He further noted that her symptoms had been much worse since she had carpeting in her office space at work. Dr. Prematta recommended that appellant work in an area without carpeting.

In a June 7, 2017 follow-up report, Dr. Prematta noted that appellant had a history consistent with allergic rhinitis. Appellant's skin test was also positive for dust mites. Dr. Prematta advised that appellant noticed a worsening of symptoms around carpeting, and once she avoided the carpeting she was much better. He recommended limiting exposure to carpeted areas.

By decision dated December 18, 2017, OWCP denied appellant's occupational disease claim. It found that the medical reports submitted in support of her claim did not provide medical rationale explaining how her allergic rhinitis was causally related to her specific duties as an inventory management specialist.

On May 4, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.² On May 29, 2018 she requested reconsideration before OWCP.³

By decision dated June 28, 2018, OWCP's hearing representative determined that appellant was not entitled to a hearing as a matter of right because her request for hearing was postmarked May 4, 2018, which was more than 30 days after OWCP's December 18, 2017 decision. She determined that the matter could be equally well addressed by appellant requesting reconsideration and providing new evidence to establish that she sustained an employment-related condition.

² Although appellant's hearing request was signed and dated January 18, 2018, the request was postmarked May 4, 2018.

³ Appellant's request for reconsideration was also signed and dated January 18, 2018, but postmarked May 22, 2018.

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 [or her] claim before a representative of the Secretary.”⁴

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.”⁵ 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 the hearing is sought.⁶ However, OWCP has discretion to grant or deny a request that is made after this 30-day period.⁷ In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.⁸

ANALYSIS

The Board finds that OWCP did not abuse its discretion when it denied appellant’s May 4, 2018 hearing request before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

Appellant had 30 days from OWCP’s December 18, 2017 merit decision to request a hearing before OWCP’s Branch of Hearings and Review. She requested an oral hearing by appeal request form dated January 18, 2018, and postmarked May 4, 2018. As the postmark date was more than 30 days after OWCP’s December 18, 2017 decision, appellant was not entitled to an oral hearing as a matter of right.⁹ Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.¹⁰

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 causal

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. § 10.615.

⁶ *Id.* at § 10.616(a).

⁷ *G.W.*, Docket No. 10-0782 (issued April 23, 2010); *James Smith*, 53 ECAB 188, 191-92 (2001).

⁸ *James Smith*, *id.*

⁹ 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 2.1601.4a (October 2011).

¹⁰ 5 U.S.C. § 8124(b)(1); see *William F. Osborne*, 46 ECAB 198 (1994).

relationship.¹¹ 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.¹² In this case, the record does not indicate that OWCP abused its discretion in its denial of appellant's untimely request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her request for a hearing as untimely filed under 5 U.S.C. § 8124(b).¹³

CONCLUSION

The Board finds that OWCP did not abuse its discretion when it denied appellant's May 4, 2018 hearing request before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 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

¹¹ *M.H.*, Docket No. 15-0774 (issued June 19, 2015).

¹² *M.G.*, Docket No. 17-1831 (issued February 6, 2018) (citing *Daniel J. Perea*, 42 ECAB 214, 221 (1990)).

¹³ *Id.*; *R.P.*, Docket No. 16-0554 (issued May 17, 2016).