

FACTUAL HISTORY

On January 30, 2018 appellant, then a 37-year-old secretary, filed a traumatic injury claim (Form CA-1) alleging that she sustained an emotional condition on January 29, 2018 as a result of witnessing a contraband search of an inmate. She alleged that, while sitting at her desk reviewing daily paperwork, another staff member brought three inmates into the lieutenant's office to conduct visual searches. While the staff member was conducting a visual search on one of the inmates in the holding cell, one of the inmates sitting on the bench reached into his shoe and had something in his hand. Appellant claimed that she began to have heart palpitations, severe tremors, and dizziness as a result of exposure to the contraband found on the inmate. She did not stop work.

In a report dated January 29, 2018, Dr. Anita Toussi, an emergency medicine specialist, reported that appellant presented to the emergency department with possible drug exposure at work and diagnosed accidental work exposure with opiate substances, palpitation, and tremor. She related that appellant was working at a federal prison that day when she accidentally touched a piece of paper that was soaked in K2. Appellant reportedly began shaking and immediately used hand sanitizer on her hands.

By development letter dated February 12, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her occupational disease claim. It noted that she had not submitted evidence sufficient to establish that she actually experienced the employment factors alleged to have caused her injury. OWCP advised her of the type of medical and factual evidence needed and provided a questionnaire for her completion. It afforded appellant 30 days to submit the necessary evidence. Appellant did not submit a response.

By decision dated March 13, 2018, OWCP denied appellant's claim, finding that she had not submitted sufficient factual evidence to establish her claim.

On May 8, 2018 OWCP received appellant's request for a telephonic hearing with a representative of OWCP's Branch of Hearings and Review, accompanied by a copy of OWCP's March 13, 2018 decision. The request was dated April 30, 2018 and postmarked on May 4, 2018.

In an April 30, 2018 memorandum addressed to OWCP's Branch of Hearings and Review, appellant reiterated that she had experienced accidental exposure to drugs when she handled contraband discovered on an inmate without the use of gloves while in the performance of duty. She asserted that, upon exposure, she became ill, experiencing symptoms of aggressive shaking and could not continue to work. Appellant further noted that subsequent tests on the contraband revealed that it was contaminated with Morphine and she continues to have symptoms of loss of concentration and focus. She noted that April 30, 2018 was the first date that she had been provided with a copy of the March 13, 2018 decision by the safety specialist at the employing establishment and she also requested that all future correspondence be sent to her home address.

By decision dated May 25, 2018, OWCP denied appellant's request for an oral hearing. It found that her request was not made within 30 days of OWCP's March 13, 2018 decision. As such, appellant was not entitled to a hearing as a matter of right. OWCP exercised its discretion and determined that it would not grant a hearing for the reason that the issue in the case could equally well be addressed by requesting reconsideration and submit new evidence establishing an employment-related injury.

LEGAL PRECEDENT

Section 8124 of FECA provides that a claimant is entitled to a hearing before an OWCP representative when a request is made within 30 days after issuance of an OWCP final decision.³

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.”⁴

Under section 10.616(a), “[a] claimant injured on or after July 4, 1966, who had received a final adverse decision by the district OWCP may obtain a hearing by writing to the address specified in the decision. 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.”⁵

OWCP’s regulations further provide that a request received more than 30 days after OWCP’s decision is subject to OWCP’s discretion⁶ and the Board has held that OWCP must exercise this discretion when a hearing request is untimely.⁷

ANALYSIS

Appellant requested an oral hearing utilizing the appeal request form that accompanied OWCP’s March 13, 2018 merit decision. OWCP noted that appellant’s request was postmarked May 4, 2018, which was more than 30 days after OWCP’s March 13, 2018 decision.⁸ Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.⁹ For this reason, the Board finds that the request was untimely and appellant was not entitled to an oral hearing as a matter of right.

Although appellant was not entitled to a hearing, OWCP may exercise its discretion to either grant or deny an oral hearing even if appellant is not entitled to a review as a matter of right.¹⁰ The Board finds that OWCP, in its May 25, 2018 decision, properly exercised its discretionary authority by noting that it had carefully considered the matter and denied appellant’s

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

⁵ *Id.* at § 10.616(a).

⁶ *Id.* at § 10.616(b).

⁷ *D.W.*, Docket No. 17-1413 (issued December 18, 2018); *Samuel R. Johnson*, 51 ECAB 612, 613-14 (2000).

⁸ Under OWCP 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.*

⁹ *William F. Osborne*, 46 ECAB 198 (1994).

¹⁰ *D.E.*, 59 ECAB 438, 442-43 (2008); *J.C.*, 59 ECAB 206, 210-11 (2007).

request for an oral hearing as her claim could be equally well addressed through a reconsideration application.¹¹ 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, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.¹² Herein, the evidence of record does not indicate that OWCP committed an abuse of discretion in connection with its denial of appellant's request for an oral hearing.

CONCLUSION

The Board finds that OWCP properly denied appellant's May 4, 2018 request for an oral hearing as untimely.

ORDER

IT IS HEREBY ORDERED THAT the May 25, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 14, 2019
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

¹¹ 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 deductions from known facts. *See André Thyratron*, 54 ECAB 257, 261 (2002).

¹² *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).