

**United States Department of Labor
Employees' Compensation Appeals Board**

M.M., Appellant)	
)	
and)	Docket No. 19-1171
)	Issued: October 22, 2019
U.S. POSTAL SERVICE, POST OFFICE, Santa Ana, CA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 29, 2019 appellant filed a timely appeal from an April 4, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated February 9, 2018, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of the case.²

ISSUE

The issue is whether OWCP properly denied appellant's March 6, 2019 request for an oral hearing as untimely filed under 5 U.S.C. § 8124.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 4, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On January 3, 2018 appellant, then a 33-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that she sustained left hip, left flank, and left lower extremity injuries on November 2, 2017 as a result of a motor vehicle collision while in the performance of duty.

By development letter dated January 9, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her traumatic injury 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 appellant of the type of medical and factual evidence needed and provided a questionnaire for her completion. It afforded her 30 days to submit the necessary evidence.

In response, appellant provided chart notes and reviews of imaging studies dated from November 4, 2017 through January 18, 2018 by Dr. Gary A. Linnemann, a Board-certified family practitioner, noting appellant's account of a November 2, 2017 motor vehicle collision in which a private car struck the left front wheel and driver's side door of her delivery truck. Dr. Linnemann diagnosed a left knee contusion, left hip strain, left lower extremity contusion, lumbar strain, lumbar pain, cervical paraspinal strain, and right rotator cuff strain caused by the November 2, 2017 employment incident. He prescribed physical therapy. Dr. Kahesha K. Franklin, a Board-certified family practitioner, returned appellant to full duty effective January 22, 2018. Appellant did not complete and submit the questionnaire provided.

By decision dated February 9, 2018, OWCP denied appellant's claim, finding that she had not submitted sufficient factual evidence to establish her claim. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Following issuance of the February 9, 2018 decision, appellant submitted additional factual and medical evidence.

On March 26, 2019 OWCP received appellant's request for an oral hearing with a representative of OWCP's Branch of Hearings and Review. The request was dated March 5, 2019 and postmarked March 6, 2019.

By decision dated April 4, 2019, OWCP denied appellant's request for an oral hearing. It found that her request was not made within 30 days of OWCP's February 9, 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 submitting 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

³ 5 U.S.C. § 8124(b)(1).

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

The Board finds that OWCP properly denied appellant’s March 6, 2019 request for an oral hearing as untimely filed under 5 U.S.C. § 8124.

Appellant requested an oral hearing and the request was postmarked March 6, 2019, which was more than 30 days after OWCP’s February 9, 2018 decision.⁸ Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.⁹ As such, the request was untimely and appellant was not entitled to an oral hearing as a matter of right.

The Board further finds that OWCP, in its April 4, 2019 decision, properly exercised its discretionary authority by noting that it had considered the matter and denied appellant’s request for an oral hearing as her claim could be equally well addressed through a reconsideration application.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, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction

⁴ 20 C.F.R. § 10.615.

⁵ *Id.* at § 10.616(a).

⁶ *Id.* at § 10.616(b).

⁷ *J.G.*, Docket No. 19-0555 (issued March 14, 2019); *D.W.*, Docket No. 17-1413 (issued December 18, 2018); *Samuel R. Johnson*, 51 ECAB 612, 613-14 (2000).

⁸ 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.*

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

¹⁰ 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).

from established facts.¹¹ Herein, the Board finds that the evidence of record does not show that OWCP abused its discretion in connection with its denial of appellant's request for an oral hearing.¹²

On appeal appellant contends that she promptly reported the claimed injury to her supervisor and submitted all documentation requested. However, these arguments pertain to the merits of the claim, which are not before the Board on the present appeal.

CONCLUSION

The Board finds that OWCP properly denied appellant's March 6, 2019 request for an oral hearing as untimely under 5 U.S.C. § 8124.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 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

¹¹ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹² *J.G.*, *supra* note 7.