

ISSUE

The issue is whether OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative as untimely filed under 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On August 21, 2018 appellant, then a 58-year-old enumerations clerk, filed a traumatic injury claim (Form CA-1) alleging that on July 16, 2018 she tripped over a computer cord and sustained a bruised shoulder and hip while in the performance of duty. She stopped work on July 17, 2018.

In a development letter dated September 7, 2018, OWCP advised appellant that additional factual and medical evidence was necessary to establish her claim. A factual questionnaire was provided. Appellant was afforded 30 days to submit the necessary evidence.

OWCP received a July 19, 2018 nurse practitioner's note. It also received a magnetic resonance imaging (MRI) scan report dated August 18, 2018 and an x-ray report dated August 28, 2018.

Appellant completed OWCP's development questionnaire on October 7, 2018. She reiterated the facts surrounding her fall at work on July 16, 2018.

By decision dated October 25, 2018, OWCP denied appellant's claim, finding that the incident occurred, as alleged; however, appellant had not established that a medical condition was diagnosed causally related to the accepted incident.

In an appeal request form dated November 13, 2018, appellant requested an oral hearing before an OWCP hearing representative. The postmark indicated that the request was mailed on November 26, 2018. The request was received by OWCP's Branch of Hearings and Review on December 6, 2018.

OWCP thereafter received a July 17, 2018 treatment note from a physician assistant.

By decision dated March 6, 2019, OWCP's hearing representative denied appellant's request for an oral hearing as untimely filed. After, exercising its discretion, the Branch of Hearings and Review further found that the merits of the claim could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before a 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.”³

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.⁴ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by the postmark or other carrier’s date marking and before the claimant has requested reconsideration.⁵ 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.⁶

ANALYSIS

The Board finds that OWCP improperly denied appellant’s request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

A request for a hearing or review of the written record must, as noted above, be made within 30 days after the date of the issuance of an OWCP final decision. Appellant’s request for a review of the written record was postmarked November 26, 2018. The Board has held that, in computing a time period, the date of the event from which the designated period of time begins to run shall not be included while the last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a federal holiday.⁷ The 30-day time period for determining the timeliness of appellant’s hearing request began on October 25, 2018, and ended on November 24, 2018, a Saturday. The first regular business day after November 24, 2018 was Monday, November 26, 2018. As appellant’s request for a review of the written record was made on November 26, 2018, her request was made within 30 days of October 25, 2018 and, therefore, was timely.⁸

Since appellant filed a timely hearing request, she is entitled to a hearing pursuant to 5 U.S.C. § 8124(b)(1). The case will be remanded for a hearing before an OWCP hearing representative, to be followed by a *de novo* decision.

³ 5 U.S.C. § 8124(b)(1).

⁴ 5 20 C.F.R. §§ 10.616, 10.617.

⁵ *Id.* at § 10.616(a).

⁶ *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *M.G.*, Docket No. 17-1831 (issued February 6, 2018); *Eddie Franklin*, 51 ECAB 223 (1999).

⁷ *See D.M.*, Docket No. 19-0686 (issued November 13, 2019); *B.W.*, Docket No. 16-1860, *Order Remanding Case* (issued May 4, 2017).

⁸ *See id.*

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for an oral hearing before an OWCP hearing representative as untimely filed under 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 26, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board