



have elapsed from OWCP's last merit decision, dated June 19, 2018, to the filing of this appeal, pursuant to FECA<sup>3</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.<sup>4</sup>

### ISSUE

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

### FACTUAL HISTORY

On September 20, 1992 appellant, then a 40-year-old postal clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date a safety bar from an all-purpose container (APC) swung forward striking her in the mouth breaking her teeth and cutting her upper lip while in the performance of duty. OWCP accepted the claim for fractured teeth numbers 25, 8, and 9. It later expanded acceptance of her claim to include adjustment disorder with mixed features, and fracture of the teeth and maxilla.

By decision dated September 1, 1998, OWCP indicated that appellant had been employed as a full-time administrative clerk, effective April 1, 1998, which was over 60 days, and that the pay in that position of \$280.00 per week was equivalent to the pay rate for the position appellant held at the time of her injury and, thus, no loss of wages were incurred. It concluded that the position of full-time administrative clerk fairly and reasonably represented appellant's wage-earning capacity.

Appellant subsequently stopped work and OWCP paid her wage-loss compensation on the supplemental rolls from June 16 to July 13, 2002 and placed her on the periodic rolls (from commencing) mean the same thing? July 14, 2002. She remained on the periodic rolls until the suspension of her wage-loss compensation on June 23, 2018.

On March 15, 2018 OWCP referred appellant to Dr. Richard Sutton, a Board-certified psychiatrist and neurologist, for a second opinion examination. The appointment was scheduled for April 3, 2018 at 11:00 a.m. OWCP requested that Dr. Sutton evaluate whether appellant continued to have residuals/disability causally related to her accepted September 20, 1992 employment injury.

On April 3, 2018 Medical Consultants Network informed OWCP that appellant failed to appear for her scheduled appointment with Dr. Sutton on April 3, 2018.

In an April 6, 2018 notice, OWCP proposed to suspend appellant's compensation and medical benefits pursuant to 5 U.S.C. § 8123(d) as she failed to attend the examination as directed

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The Board notes that appellant submitted additional evidence to OWCP following the July 2, 2019 decision, and on appeal. 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.*

by OWCP that was scheduled on April 3, 2018 with Dr. Sutton. It advised her that she should provide a written explanation of her reasons for failing to attend the scheduled examination, with substantive corroborating evidence, within 14 days. No response was received.

By decision dated June 19, 2018, OWCP finalized its proposed suspension, pursuant to 5 U.S.C. § 8123(d), effective June 24, 2018. It found that it had directed appellant on March 15, 2018 to attend a second opinion examination scheduled for April 3, 2018, but that she had not attended the appointment nor had she provided a reason why she had refused to attend the examination.

A Form CA-110 memorializes that on August 10, 2018 appellant called OWCP to request rescheduling of her second opinion examination.<sup>5</sup> She was instructed that she would need to “appeal her case.” Subsequently, in an appeal request form dated June 5, 2019, postmarked June 6, 2019, appellant requested an oral hearing by a representative of OWCP’s Branch of Hearings and Review. She asserted that she had not received the March 15, 2018 letter from OWCP scheduling her for an appointment with Dr. Sutton.

By decision dated July 2, 2019, OWCP’s hearing representative denied appellant’s request for an oral hearing, finding that the request was untimely filed. The hearing representative informed appellant that her case had been considered in relation to the issues involved and that the issues could be equally addressed by requesting reconsideration and submitting evidence not previously considered.

### **LEGAL PRECEDENT**

Section 8124 FECA, concerning a claimant’s entitlement to a hearing before an OWCP hearing representative, provides that a claimant is entitled to a hearing before an OWCP representative when a request is made 30 days after issuance of an OWCP final decision.<sup>6</sup>

A hearing is a review by an OWCP hearing representative of a final adverse decision issued by an OWCP district office.<sup>7</sup> Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.<sup>8</sup> A request for either an oral hearing or a review of the written record must be sent, in writing, within 30 days of the date of the decision for which the hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision.<sup>9</sup>

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<sup>5</sup> The case record does not demonstrate that appellant’s documented request that OWCP reschedule her appointment with Dr. Sutton has been either accepted or denied. Therefore, the issue of whether appellant has cured her obstruction sufficient to retroactively reinstate her wage-loss compensation and medical benefits remains in an interlocutory posture.

<sup>6</sup> 5 U.S.C. § 8124(b)(1).

<sup>7</sup> 20 C.F.R. § 10.616.

<sup>8</sup> *Id.* at § 10.615.

<sup>9</sup> *K.L.*, Docket No. 19-0480 (issued August 23, 2019).

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.<sup>10</sup>

### ANALYSIS

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

Appellant had 30 days following OWCP's June 19, 2018 merit decision to request an oral hearing before a representative of OWCP's Branch of Hearings and Review. As her request for an oral hearing was postmarked June 6, 2019, more than 30 days after OWCP's June 19, 2018 decision, it was untimely filed and she was, therefore, not entitled to an oral hearing as a matter of right.<sup>11</sup> Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.<sup>12</sup>

OWCP also has the discretionary power to grant an oral hearing or review of the written record even if the claimant is not entitled to a review as a matter of right. The Board finds that OWCP, in its July 2, 2019 decision, properly exercised its discretion noting that it had considered the matter in relation to the issue of failure to attend a medical examination and determined that the issue could be equally well addressed through a reconsideration application. The Board has held that, as the only limitation on OWCP's authority is reasonableness, 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.<sup>13</sup> The Board finds that the evidence of record does not indicate that OWCP abused its discretion in connection with its denial of appellant's request for an oral hearing.

Accordingly, the Board finds that OWCP properly denied appellant's request for an oral hearing.

### CONCLUSION

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

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<sup>10</sup> *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).

<sup>11</sup> 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); *see also G.S.*, Docket No. 18-0388 (issued July 19, 2018).

<sup>12</sup> 5 U.S.C. § 8124(b)(1); *see M.K.*, Docket No. 19-0428 (issued July 15, 2019); *R.H.*, Docket No. 18-1602 (issued February 22, 2019); *William F. Osborne*, 46 ECAB 198 (1994).

<sup>13</sup> *See T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 2, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board