

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

E.E., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Plainfield, NJ, Employer**

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**Docket No. 20-1290
Issued: July 21, 2021**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On June 9, 2020 appellant filed a timely appeal from a February 4, 2020 no merit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days have elapsed from OWCP's last merit decision, dated December 6, 2019, 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 over the merits of this case.

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 23, 2019 appellant, then a 33-year-old city carrier assistant 1, filed a traumatic injury claim (Form CA-1) alleging that on October 21, 2019 she injured her right foot when she slipped on an acorn while in the performance of duty. She stopped work on October 21, 2019.

In an October 22, 2019 statement, appellant recounted that she tripped over an acorn on October 21, 2019, at approximately 3:10 p.m., while in the performance of duty.

Appellant's supervisor, T.M., indicated in an October 23, 2019 statement, that appellant notified her on October 22, 2019 that she had tripped on an acorn while delivering mail on October 21, 2019, alleging that she felt pain in the tendon of her right foot. She noted that appellant initially refused medical treatment.

In an October 23, 2019 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to seek medical care for tendinitis in her right foot.

In a November 5, 2019 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of medical evidence needed and afforded her 30 days to submit the necessary evidence.

Dr. Adam Kaplan, a podiatrist, noted in an October 24, 2019 duty status report (Form CA-17), that appellant was injured on October 21, 2019 and observed that she had tenderness to palpation and restricted range of motion. He provided work restrictions.

In an attending physician's report, Part B of the Form CA-16, dated October 25, 2019, Dr. Adam Kaplan indicated that appellant's preexisting posterior tibial tendon dysfunction was asymptomatic until recently. He checked a box marked "Yes," indicating that her posterior tibial tendon dysfunction was caused or aggravated by an employment activity.

In an October 26, 2019 attending physician's report (Form CA-20), Dr. Adam Kaplan noted that appellant had preexisting posterior tibial tendon dysfunction in her right foot. He diagnosed posterior tendinitis in the same foot and checked a box marked "Yes," indicating that the diagnosed condition was caused or aggravated by an employment activity.

In a November 7, 2019 work capacity evaluation report (Form OWCP-5c), Dr. Warren E. Kaplan, a podiatrist, diagnosed right posterior tibial tendon tendinitis/dysfunction and indicated that appellant could only work with light-duty restrictions for at least six months.

By decision dated December 6, 2019, OWCP denied appellant's traumatic injury claim, finding that, while the October 21, 2019 employment incident occurred as alleged, the medical evidence of record was insufficient to establish causal relationship between her diagnosed right foot condition and the accepted employment incident.

On an appeal request form dated January 4, 2020, and postmarked January 10, 2020, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated February 4, 2020, OWCP denied appellant's hearing request. It found that the request was untimely filed as it was postmarked January 10, 2020, more than 30 days after its December 6, 2019 merit decision. After exercising its discretion, OWCP further found that the issue in the case could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that "a claimant for compensation not satisfied with a decision of the Secretary 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."²

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.³ 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 postmark or other carrier's date marking and before the claimant has requested reconsideration.⁴ 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.⁵

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 sought review of a December 6, 2019 OWCP decision by requesting an oral hearing before a representative of OWCP's Branch of Hearings and Review on an appeal request form dated January 4, 2020 and postmarked January 10, 2020. OWCP denied her request for a hearing in a decision dated February 4, 2020, finding that her request was not timely filed. The 30-day time period for determining the timeliness of her hearing request ended on January 5, 2020, a Sunday.⁶ The first regular business day after January 5, 2020 was Monday, January 6, 2020. The January 4, 2020 hearing request was postmarked January 10, 2020. Because the postmark date of the hearing request was more than 30 days after the date of OWCP's December 6, 2019

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. §§ 10.616, 10.617.

⁴ *Id.* at § 10.616(a).

⁵ *D.S.*, Docket No. 19-1764 (issued March 13, 2020); *E.D.*, Docket No. 19-1562 (issued March 3, 2020); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁶ *J.M.*, Docket No. 19-1111 (issued November 20, 2019); *Eddie Franklin, id.* (The 30-day period for determining the timeliness of an employee's request for an oral hearing or review commences the day after the issuance of OWCP's decision). See also *Donna A. Christley*, 41 ECAB 90 (1989).

decision, the Board finds that it was untimely filed and appellant was not entitled to a hearing as a matter of right.⁷

Although appellant's request for an oral hearing was untimely filed, OWCP has the discretionary authority to grant the request and it must exercise such discretion.⁸ The Board finds that in the February 4, 2020 decision, OWCP properly exercised its discretion by determining that the issue in the case could be equally well addressed by a request for reconsideration before OWCP along with submitting additional medical evidence. The Board has held that the only limitation on OWCP's authority is reasonableness.⁹ An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken, which are contrary to both logic and probable deductions from established facts.¹⁰ In this case, the evidence of record does not indicate that OWCP abused its discretion by denying appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

CONCLUSION

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).¹¹

⁷ *Id.*

⁸ *Id.*

⁹ *S.M.*, Docket No. 19-0989 (issued May 12, 2020); *D.R.*, Docket No. 19-1899 (issued April 15, 2020).

¹⁰ *Id.*

¹¹ The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 21, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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