

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

V.S., Appellant)	
)	
and)	Docket No. 22-1325
)	Issued: December 16, 2022
U.S. POSTAL SERVICE, FERNDALE POST)	
OFFICE, Ferndale, WA, Employer)	
)	

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, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 6, 2022 appellant filed a timely appeal from an August 26, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from the last merit decision dated December 21, 2021 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

¹ The Board notes that, following the August 26, 2022 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.*

² 5 U.S.C. § 8101 *et seq.*

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).

FACTUAL HISTORY

On June 27, 2018 appellant, then a 51-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained low back pain, a herniated disc, and nerve root impingement when she fell when trying to lift a box while in the performance of duty. She stopped work on June 27, 2018. OWCP accepted the claim for lumbosacral intervertebral disc disorders with radiculopathy, a permanent aggravation of lumbar disc disease at L5-S1, and lumbar radiculopathy. It paid appellant wage-loss compensation for total disability from August 13, 2018 to January 18, 2019.

Appellant stopped work on January 14, 2019. On March 7, 2019 she underwent an OWCP-authorized hemilaminotomy and microdiscectomy on the left at L5-S1. OWCP paid appellant wage-loss compensation on the supplemental rolls from January 19 to March 29, 2019 and from April 13 to June 17, 2019. On June 18, 2019 appellant resumed her usual employment.

On August 6, 2021 appellant filed claims for compensation (Form CA-7) beginning March 27, 2021 and continuing.

In a development letter dated August 20, 2021, OWCP informed appellant of the deficiencies in her claim for compensation. It advised her of the definition of a recurrence of disability and type of factual and medical evidence needed. OWCP afforded appellant 30 days to submit additional evidence.

By decision dated December 21, 2021, OWCP found that appellant had not established a recurrence of disability commencing March 27, 2021 causally related to the accepted June 27, 2018 employment injury.

In correspondence dated July 28, 2022 and postmarked July 29, 2022, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated August 26, 2022, OWCP's Branch of Hearings and Review denied appellant's request for an oral hearing, finding that it was untimely filed. It further exercised its discretion and determined that the issue in the case could equally well be addressed by a request for reconsideration before OWCP along with the submission of new evidence supporting that she had sustained a recurrence of disability.

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.”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 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 properly denied appellant’s request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

In correspondence dated July 28, 2022 and postmarked July 29, 2022, appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review; however, this request was made more than 30 days after OWCP’s December 21, 2021 decision. Section 8124(b)(1) is unequivocal on the time limitation for filing a request for a hearing.⁷ As such, the request was untimely filed, and appellant was not entitled to an oral hearing as a matter of right.⁸

The Board further finds that OWCP, in its August 26, 2022 decision, properly exercised its discretionary authority, explaining 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 request.

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 deductions from established facts.⁹ 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

³ 5 U.S.C. § 8124(b).

⁴ 20 C.F.R. §§ 10.616, 10.617.

⁵ *Id.* at § 10.616(a).

⁶ *M.F.*, Docket No. 21-0878 (issued January 6, 2022); *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁷ *See supra* note 3; *K.N.*, Docket No. 22-0647; *G.H.*, Docket No. 22-0122 (issued May 20, 2022).

⁸ *See D.R.*, Docket No. 22-0361 (issued July 8, 2022); *D.S.*, Docket No. 21-1296 (issued March 23, 2022); *P.C.*, Docket No. 19-1003 (issued December 4, 2019).

⁹ *See S.I.*, Docket No. 22-0538 (issued October 3, 2022); *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214 (1990).

OWCP properly denied her request for an oral hearing pursuant to 5 U.S.C. § 8124(b) as untimely filed.

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).

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board