

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

S.N., Appellant)	
)	
and)	Docket No. 22-1048
)	Issued: April 3, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Oklahoma City, OK, 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
JANICE B. ASKIN, Judge

JURISDICTION

On July 6, 2022 appellant filed a timely appeal from a June 10, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated June 24, 2021, 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.²

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.*

² Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. 20 C.F.R. § 501.3(e)-(f). The 180th day following OWCP's June 24, 2021 decision was December 21, 2021. As this appeal was filed on July 6, 2022, the Board lacks jurisdiction to review the June 24, 2021 merit decision. *See P.H.*, Docket No. 19-1354 (issued March 13, 2020); *E.H.*, Docket No. 19-0859 (issued December 10, 2019).

FACTUAL HISTORY

On June 14, 2006 appellant, then a 42-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her right shoulder while in the performance of duty. On November 6, 2008 OWCP accepted the claim for sprain of shoulder and upper arm, unspecified site, left, resolved. On July 23, 2009 it accepted the claim for sprain of shoulder and upper arm, unspecified site, right, resolved.

By letter dated March 8, 2021, appellant requested expansion of the acceptance of her claim based upon a February 24, 2021 report from Dr. John W. Ellis, a Board-certified family practitioner.

By decision dated June 24, 2021, OWCP denied expansion of the claim.

On September 13, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the June 24, 2021 decision.

By decision dated October 8, 2021, OWCP denied appellant's request for an oral hearing, finding that it was untimely filed as it was not made within 30 days of OWCP's June 24, 2021 decision. It, therefore, concluded that she was not entitled to a hearing as a matter of right. OWCP further exercised discretion and determined that the issue in this case could be equally-well addressed through a request for reconsideration along with the submission of new evidence to establish expansion of appellant's claim.

On May 24, 2022 appellant again requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the June 24, 2021 decision.

By decision dated June 10, 2022, OWCP denied appellant's request for an oral hearing as untimely filed as it was not made within 30 days of its June 24, 2021 decision. It, therefore, concluded that she was not entitled to a hearing as a matter of right. OWCP further exercised discretion and determined that the issue in this case could be equally-well addressed through a request for reconsideration along with the submission of new evidence to establish expansion of the claim. It noted that appellant had previously requested a hearing regarding the June 24, 2021 decision and that the prior request was denied.

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. 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

³ 20 C.F.R. §§ 10.616, 10.617, and 10.618.

⁴ *Id.* at § 10.616(a).

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).

On May 24, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review;⁶ however, this request was made more than 30 days after OWCP's June 24, 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.

The Board further finds that OWCP in its June 10, 2022 decision, properly exercised its discretionary authority, as his expansion 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 deduction from established facts.⁸ The Board finds that the evidence of record does not establish that OWCP abused its discretion in denying appellant's request for an oral hearing before an OWCP hearing representative.⁹

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).

⁵ *G.H.*, Docket No. 22-0122 (issued May 20, 2022); *E.E.*, Docket No. 20-1290 (issued July 21, 2021); *J.T.*, Docket No. 18-0664 (issued August 12, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁶ 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, if available. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (October 2011). Otherwise, the date of the letter itself should be used. See *J.H.*, Docket No. 06-1565 (issued February 20, 2007); *James B. Moses*, 52 ECAB 465 (2001), citing *William J. Kapfhammer*, 42 ECAB 271 (1990); see also *Douglas McLean*, 42 ECAB 759 (1991).

⁷ See *M.M.*, Docket No. 19-1171 (issued October 22, 2019); *William F. Osborne*, 46 ECAB 198 (1994).

⁸ *T.G.*, Docket No. 19-0904 (issued November 25, 2019); see *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁹ *J.G.*, Docket No. 19-0555 (issued March 14, 2019).

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board