

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

_____)	
L.M., Appellant)	
)	
and)	Docket No. 23-0206
)	Issued: July 11, 2023
U.S. POSTAL SERVICE, OLD CHELSEA POST)	
OFFICE, New York, NY, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 28, 2022 appellant filed a timely appeal from June 8 and 30, 2022 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated September 13, 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.

ISSUE

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

FACTUAL HISTORY

On July 22, 2021 appellant, then a 56-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on July 1, 2021 she sustained a head and neck injury when a

¹ 5 U.S.C. § 8101 *et seq.*

heavy board was pushed on her head while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. The form indicated that appellant stopped work on July 1, 2021.

On July 2, 2021 appellant was treated in an emergency department by Dr. Randy D'Amico, a Board-certified neurosurgeon, the discharge note was signed by Dana Clegg, a registered nurse. The diagnosis was traumatic injury of the head, neck injury, and hand weakness.

On July 20, 2021 appellant was treated by Dr. Ranga C. Krishna, a Board-certified neurologist, who noted that she was seen for a "work[-]related" accident. Dr. Krishna provided diagnoses of post-traumatic headaches and cervical spine myofascitis/disc syndrome. He advised that she could return to work on August 9, 2021 but no driving allowed.

An unsigned duty status report (Form CA-17) dated July 22, 2021 indicated a diagnosis of synovitis and tenosynovitis of the left ankle and foot.

A work status note dated July 23, 2021 and signed by Lauren Heraghty, a nurse practitioner, indicated that appellant was off work from July 5 to 19, 2021 due to chronic pain.

In a development letter dated August 10, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Appellant submitted an additional visit note from Dr. Krishna dated July 20, 2021 who related that she injured her head, neck, and back as a result of a work accident. Dr. Krishna assessed cerebrovascular concussion, traumatic brain injury, and cervical radiculopathy.

On July 23, 2021 appellant was seen by Dr. Raymond Bartoli, a chiropractor, who related that she was struck in the head by a door at work and subsequently knocked into a wall, resulting in injury to her head and neck region. Dr. Bartoli diagnosed cervical disc syndrome and radiculopathy, as well as segmental dysfunction to the cervical spine.

A magnetic resonance imaging (MRI) scan report of appellant's brain dated July 27, 2021 and signed by Dr. Karl L. Hussman, a Board-certified neuroradiologist, noted profound statistically significant cortical atrophy primarily involving the frontal, occipital, and temporal lobes, as well as atrophy of limbic system and significant atrophy of the right globus pallidus, and significant findings most consistent with traumatic brain injury.

In an August 4, 2021 report, Dr. Krishna related continued headache, neck, and low back pain. He assessed post-traumatic cephalgia headache, and cervical and lumbosacral radiculopathy. Dr. Krishna opined that appellant was temporarily totally disabled and held her off work until August 9, 2021.

On August 10, 2021 OWCP received a work status report (Form CA-3) indicating that appellant stopped work on July 1, 2021 and returned to modified duty on August 9, 2021.

By decision dated September 13, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury occurred on July 1,

2021, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

An MRI scan report of the cervical spine dated August 2, 2021 was received from Dr. Hussman. Impression: (1) right-sided paracentral C2-3 herniation indenting the sac, broad-based right-sided C3-4 herniation causing moderate cord impingement; (2) broad-based herniation at C4-5 with narrowing of the interspace and mild diffuse cord impingement; (3) C5-6 broad-based herniation causing mild cord impingement; (4) C6-7 and C7-T1 herniations indent the sac at each level without impingement; (5) moderate left-sided C4-5, mild left-sided C5-6 foraminal stenosis; and (6) compression fracture of the inferior endplate of C4, mild marrow edema.

On September 16, 2021 appellant underwent a functional capacity evaluation by Dr. Krishna. Dr. Krishna recommended hyperbaric oxygen therapy, physical therapy, and light-duty work.

On October 6, 2021 appellant was reevaluated by Dr. Bartoli. Dr. Bartoli diagnosed cervical disc syndrome and radiculopathy, as well as segmental dysfunction to the cervical spine. He recommended spinal manipulation and modalities to the injured areas.

On May 19, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated June 8, 2022, OWCP 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.

On June 20, 2022 appellant again requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated June 30, 2022, OWCP denied appellant's second 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.

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

² *Id.* at § 8124(b).

³ 20 C.F.R. §§ 10.616, 10.617.

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 requests for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

On May 19, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. She again requested an oral hearing on June 20, 2022. As both requests were made more than 30 days after OWCP's September 13, 2021 decision, they were untimely filed, and appellant was not entitled to an oral hearing as a matter of right.

Although appellant was not entitled to a review of the written record as a matter of right, OWCP's Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing following reconsideration.⁶ 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. In this instance, OWCP denied a discretionary review of the written record because appellant could instead submit new evidence and request reconsideration before OWCP. The Board finds that OWCP properly exercised discretionary authority in denying her request for a review of the written record.

CONCLUSION

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

⁴ *Id.* at § 10.616(a).

⁵ *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).

⁶ *T.D.*, Docket No. 21-1063 (issued April 17, 2023); *A.S.*, Docket No. 22-1227 (issued April 6, 2023).

ORDER

IT IS HEREBY ORDERED THAT the June 8 and 30, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 11, 2023
Washington, DC

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

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

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