

ISSUE

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

FACTUAL HISTORY

On May 12, 2021 appellant, then a 38-year-old custodial laborer, filed a traumatic injury claim (Form CA-1) alleging that on April 24, 2021 she experienced chest pain, a panic attack, situational anxiety, and headaches due to sexual harassment and discrimination while in the performance of duty. She stopped work on May 13, 2021. On January 13, 2022 OWCP accepted the claim for panic disorder (episodic paroxysmal anxiety without agoraphobia) and other specified anxiety disorders. It paid appellant wage-loss compensation for total disability on the supplemental rolls from July 1, 2021 through March 11, 2022.

In a duty status report (Form CA-17) dated July 23, 2021, Dr. John Wells, a Board-certified psychiatrist, released appellant to return to work provided she could be transferred to another facility. In a subsequent Form CA-17 dated January 21, 2022, he released her to return to work in a "different location than where the event occurred" and "not working with the employee who harassed her."

On March 8, 2022 the employing establishment offered appellant a laborer custodial position at its Gretna, Louisiana location, effective March 14, 2022.

Appellant did not return report for work on March 14, 2022. She indicated that she was advised by a new physician not to return to work.

On March 30, 2022 appellant filed claims for compensation (Form CA-7) for disability from work beginning March 12, 2022 and continuing.

In a development letter dated April 6, 2022, OWCP informed appellant of the deficiencies in her claim for compensation. It advised her of the type of factual and medical evidence needed and afforded her 30 days to submit additional evidence. No response was received.

By decision dated May 12, 2022, OWCP denied appellant's claim for compensation, finding that she had not submitted sufficient medical evidence to establish disability from work during the claimed period due to the accepted employment conditions.

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

By decision dated July 25, 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 her claim for disability.

In correspondence dated and postmarked July 25, 2022, appellant again requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a statement of even date, she submitted a complaint regarding her claims examiner and requested a new claims examiner be assigned to her claim.

By decision dated August 24, 2022, OWCP's Branch of Hearings and Review denied appellant's request for an oral hearing, finding that it was untimely filed. It again 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 her claim for 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 requests for an oral hearing before an OWCP hearing representative as untimely filed, pursuant to 5 U.S.C. § 8124.

OWCP's regulations provide that the request for a hearing or review of the written record must be made within 30 days of the date of the decision for which a review is sought. Because appellant's requests for a review of the written record were submitted on June 29 and July 25, 2022 they postdated OWCP's May 12, 2022 decision by more than 30 days and, accordingly, were untimely. She was, therefore, not entitled to an oral hearing as a matter of right.⁷

³ *Supra* note 1 at § 8124(b)(1).

⁴ 20 C.F.R. §§ 10.616, 10.617.

⁵ *Id.* at § 10.616(a).

⁶ *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *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); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁷ *See K.B.*, Docket No. 21-1038 (issued February 28, 2022); *M.F.*, Docket No. 21-0878 (issued January 6, 2022); *see also P.C.*, Docket No. 19-1003 (issued December 4, 2019).

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.⁸ The Board finds that, in the July 25 and August 24, 2022 decisions, OWCP properly exercised its discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration, along with the submission of additional evidence.

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 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 a review of the written record.

Accordingly, 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).

CONCLUSION

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

⁸ *Id.*

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 24 and July 25, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 9, 2023
Washington, DC

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

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

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