

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

S.H., Appellant)	
)	
and)	Docket No. 23-0742
)	Issued: November 27, 2023
DEPARTMENT OF AGRICULTURE, U.S.)	
FOREST SERVICE, Albuquerque, NM,)	
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 April 27, 2023 appellant filed a timely appeal from an April 13, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated December 27, 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 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 September 16, 2021 appellant, then a 39-year-old helicopter crewmember, filed a traumatic injury claim (Form CA-1) alleging that on August 20, 2021 he strained/sprained his left hand and fingers when he slept on uneven ground at a helibase, while in the performance of duty. He did not stop work.

In an examination report and work status form dated October 26, 2021, Dr. William Melton, an orthopedic surgeon, noted appellant's complaints of left-hand numbness and tingling. On physical examination, he observed positive Tinel's and Phalen's test of appellant's left wrist. Dr. Melton diagnosed left wrist carpal tunnel syndrome and left-hand pain. He authorized appellant to return to full-duty work.

In an attending physician's report (Form CA-20) dated October 28, 2021, Dr. Melton noted a diagnosis of left carpal tunnel syndrome.

In a development letter dated November 22, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim. OWCP afforded appellant 30 days to respond.

In a December 14, 2021 report, Dr. Melton provided examination findings and diagnosed left wrist carpal tunnel syndrome and left-hand pain. He reported that he could not say if appellant's condition was directly related to an injury at work.

By decision dated December 27, 2021, OWCP accepted that the August 20, 2021 employment incident occurred as alleged, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted August 20, 2021 employment incident.

Appellant subsequently submitted a December 6, 2021 electromyography and nerve conduction velocity (EMG/NCV) study of the left upper extremity, which indicated evidence of moderate left median nerve compromise and moderate left ulnar nerve compromise.

On February 22, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the December 27, 2021 decision.

In a February 11, 2022 statement, received by OWCP on February 22, 2022, appellant indicated that he was working as a helicopter crewmember, fighting a wildfire, on August 20, 2021 when he woke up after sleeping in a tent at a helibase to a numb, tingling sensation in his fingers. He alleged that he had submitted all required paperwork to OWCP for his on-the-job injury.

In a report dated February 22, 2022, Dr. Melton reviewed appellant's history and provided examination findings. He diagnosed left carpal tunnel syndrome and left wrist pain.

By decision dated April 13, 2023, OWCP denied appellant's request for an oral hearing as untimely filed, finding that his request was not made within 30 days of its December 27, 2021 decision. It, therefore, concluded that he was not entitled to a hearing as a matter of right. OWCP

further exercised its 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.

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).

OWCP's regulations provide that the request for an oral hearing must be made within 30 days of the date of the decision for which review is sought.⁶ Because appellant's hearing request was received by OWCP on February 22, 2022, it postdated OWCP's December 27, 2021 decision by more than 30 days and, therefore, is untimely. Section 8124(b)(1) is unequivocal on the time limitation for filing a request for a hearing.⁷ Consequently, the Board finds that appellant was not entitled to an oral hearing as a matter of right.⁸

The Board further finds that OWCP, in its April 13, 2023 decision, properly exercised its discretionary authority, as appellant's traumatic injury claim could be equally well addressed through a reconsideration request.

² *Id.* at § 8124(b)(1).

³ 20 C.F.R. §§ 10.616, 10.617.

⁴ *Id.* at § 10.616(a).

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

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

⁷ *See S.N.*, Docket No. 22-1048 (issued April 3, 2023); *see also M.M.*, Docket No. 19-1171 (issued October 22, 2019); *William F. Osborne*, 46 ECAB 198 (1994).

⁸ *See D.S.*, Docket No. 21-1296 (issued March 23, 2022).

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, 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 establish that OWCP abused its discretion by denying appellant's request for an oral hearing before an OWCP hearing representative.¹¹

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 April 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 27, 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

⁹ *R.M.*, Docket No. 19-1088 (issued November 17, 2020). *See also E.S.*, Docket No. 18-1750 (issued March 11, 2019).

¹⁰ *T.B.*, Docket No. 20-0158 (issued March 18, 2022); *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *see Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹¹ *J.G.*, Docket No. 19-0555 (issued March 14, 2019).