

FACTUAL HISTORY

On April 7, 2016 appellant, then a 42-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on that day she sustained lower back and knee injuries when she tripped over a mat or a tub of mail while in performance of duty. She stopped work on April 7, 2016. By decision dated May 4, 2016, OWCP accepted the claim for lumbar intervertebral disc displacement. It subsequently expanded acceptance of appellant's claim to include mid cervical region disc displacement, left knee sprain, cervicgia, and lumbar radiculopathy. OWCP paid her on the supplemental rolls commencing May 23, 2016, on the periodic rolls from December 11, 2016 through July 22, 2017, and on the supplemental rolls from July 23, 2017 through May 25, 2021.

On July 7, 2022 appellant filed a claim for compensation (Form CA-7) for 20.20 hours of intermittent wage loss for medical care during the period June 22, 2021 through July 6, 2022

By decision dated August 23, 2022, OWCP denied appellant's claim for intermittent wage-loss compensation for the period June 22, 2021 through July 6, 2022. It found that the record contained no medical evidence supporting that she received medical treatment on the dates claimed.

In an appeal request form dated December 8, 2022 and postmarked December 10, 2022, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the August 23, 2022 decision.

By decision dated January 11, 2023, 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 entitlement to intermittent wage-loss compensation for medical treatment for the period June 22, 2021 through July 6, 2022.

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

³ 5 U.S.C. § 8124(b)(1).

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

⁵ *Id.* at § 10.616(a).

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 an appeal request form dated December 8, 2022 and postmarked December 10, 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 August 23, 2022 decision. Section 8124(b)(1) is unequivocal on the time limitation for filing a request for a hearing.⁷ As such, the Board finds that 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 January 11, 2023 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 discretionary 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 OWCP properly denied her request 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 request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

⁶ *S.N.*, Docket No. 22-2048 (issued April 3, 2023); *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).

⁷ *Supra* note 3; *V.S.*, Docket No. 22-1325 (issued December 16, 2022); *K.N.*, Docket No. 22-0647 (issued August 29, 2022); *G.H.*, Docket No. 22-0122 (issued May 20, 2022).

⁸ *See S.N.*, *supra* note 6; *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 V.S.*, *supra* note 7; *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).

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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