

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

_____)	
L.R., Appellant)	
)	
and)	Docket No. 23-0753
)	Issued: October 4, 2023
U.S. POST OFFICE, PALATINE PROCESSING)	
AND DISTRIBUTION CENTER, Palatine, IL,)	
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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 1, 2023 appellant filed a timely appeal from a November 17, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated March 9, 2022, 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 to review 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 January 9, 2022 appellant, then a 59-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she had sustained a right shoulder rotator cuff injury due to factors of her federal employment. She further indicated that she first became aware of the condition on October 11, 2021 and she subsequently became aware of its relationship to her employment on October 18, 2021. On the reverse side of the claim form, the employing establishment indicated that appellant first reported her condition on January 9, 2022 and that her last date of exposure was January 20, 2022.

By decision dated March 9, 2022, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 18, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the March 9, 2022 decision.

By decision dated November 17, 2022, 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 March 9, 2022 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 a diagnosed medical condition in connection with the accepted employment factors.

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.² 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.³ 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.⁴

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

³ *Id.* at § 10.616(a).

⁴ *S.N.*, Docket No. 22-1048 (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).

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 October 18, 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 March 9, 2022 decision. As such, the request was untimely filed and appellant was not entitled to an oral hearing as a matter of right.⁵

The Board further finds that OWCP, in its November 17, 2022 decision, properly exercised its discretion, as appellant's arguments 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.⁶ 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.⁷

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 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. *S.N., id.*; *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).

⁶ *W.M.*, Docket No. 22-0521 (issued March 1, 2023); *see R.S.*, Docket No. 10-672 (issued September 24, 2010).

⁷ *S.N.*, *supra* note 4; *J.G.*, Docket No. 19-0555 (issued March 14, 2019).

ORDER

IT IS HEREBY ORDERED THAT the November 17, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 4, 2023
Washington, DC

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

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

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