



## **FACTUAL HISTORY**

On September 19, 2018 appellant, then a 57-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on September 16, 2018 he sustained insect bites causing itching and swelling to his arms and hands while in the performance of duty. He did not stop work.

Along with his claim, appellant submitted an undated statement relating that on September 8, 2018 he was bitten by insects on his left arm and right hand and finger, resulting in swelling and itching that subsided two to four days later. He indicated that on September 16, 2018 he was also bitten on his left arm above his left elbow, resulting in swelling and itching. In a September 19, 2018 statement, appellant indicated that on September 8 and 16, 2018 he was repeatedly bitten by an insect on his arms, hands, and fingers, which caused swelling and continuous itching.

In an October 9, 2018 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a factual questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, appellant submitted additional medical evidence.

By decision dated November 13, 2018, OWCP denied appellant's traumatic injury claim, finding that he had not submitted sufficient evidence to establish that the incident occurred as alleged. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

Appellant continued to submit additional medical evidence.

In a request dated December 6, 2022, appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated January 18, 2023, OWCP denied appellant's request for a telephonic hearing as untimely under 5 U.S.C. § 8124, finding that the request was not made within 30 days of the November 13, 2018 decision. It further exercised discretion and determined that the issue in this 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."<sup>2</sup> 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

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<sup>2</sup> 5 U.S.C. § 8124(b)(1).

representative of the Secretary.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

### 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.<sup>6</sup> Under its regulations and procedures, the timeliness of a request for a hearing is determined based on the postmark of the envelope containing the request. If the postmark is not legible, the request will be deemed timely unless OWCP has kept evidence of date of delivery on the record reflecting that the request is untimely.<sup>7</sup> Otherwise, the date of the letter itself should be used.<sup>8</sup> Because appellant's hearing request was dated December 6, 2022, it postdated OWCP's November 13, 2018 decision by more than 30 days and, therefore, was untimely. Consequently, appellant was not entitled to an oral hearing as a matter of right.<sup>9</sup>

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.<sup>10</sup> The Board finds that, in the January 18, 2023 decision, OWCP properly exercised its discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration before OWCP, 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

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<sup>3</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>4</sup> *Id.* at § 10.616(a).

<sup>5</sup> *J.T.*, Docket No. 18-0664 (issued August 12, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.4(a) (September 2020).

<sup>7</sup> *Id.* at Chapter 2.1601.4(a) (September 2020). See *T.B.*, Docket No. 20-0158 (issued March 18, 2022).

<sup>8</sup> *K.B.*, Docket No. 21-1038 (issued February 28, 2022); 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).

<sup>9</sup> See *D.S.*, Docket No. 21-1296 (issued March 23, 2022).

<sup>10</sup> See *P.C.*, Docket No. 19-1003 (issued December 4, 2019).

exercise of judgment, or actions taken, which are contrary to both logic and probable deductions from established facts.<sup>11</sup> 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 his request for a hearing pursuant to 5 U.S.C. § 8124(b) as untimely filed.

**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 January 18, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 17, 2024  
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

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<sup>11</sup> *T.B.*, Docket No. 20-0158 (issued March 18, 2022).