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L.L., Appellant)	
)	
and)	Docket No. 23-1179
)	Issued: March 1, 2024
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS AND BORDER PROTECTION,)	
Tucson, AZ, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On September 18, 2023 appellant filed a timely appeal from a July 21, 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 January 5, 2023, 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.²

The issue is whether OWCP properly denied appellant's request for a hearing before an OWCP hearing representative, pursuant to 5 U.S.C. § 8124.

² The Board notes that, following the July 21, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board’s *Rules of Procedures* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On November 18, 2019 appellant, then a 48-year-old law enforcement communications assistant, filed an occupational disease claim (Form CA-2) alleging that she developed major depressive disorder, trauma and stressors, and anxiety disorder due to factors of her federal employment, including sexual harassment and assault. She noted that she first became aware of her claimed condition on October 8, 2019 and realized its relation to her federal employment on October 28, 2019. Appellant stopped work on October 29, 2019. OWCP accepted her condition for reaction to severe stress, and paid her wage-loss compensation on the supplemental rolls, effective November 9, 2019.

By decision dated January 5, 2023, OWCP found that appellant's actual earnings as a full-time associate logistics coordinator for a private employer, effective July 25, 2022, fairly and reasonably represented her wage-earning capacity.

On February 2, 2023 appellant requested reconsideration. She continued to submit evidence. By decision dated February 6, 2023, OWCP denied her request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On July 4, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. She continued to submit medical evidence.

By decision dated July 21, 2023, OWCP determined that appellant was not entitled to an oral hearing as a matter of right because she had previously requested reconsideration of her claim. In its discretion, it then considered appellant's request and determined that the request was denied for the reason that the issue of the case could equally well be addressed by requesting reconsideration and submitting new evidence.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before an OWCP representative, provides in pertinent part: "Before review under section 8128(a) of this title, 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 claim before a representative of the Secretary."³ Section 10.615 of OWCP's federal regulations, implementing this section of FECA, provides that a claimant who requests a hearing can choose between two formats, either an oral hearing or a review of the written record by an OWCP hearing representative.⁴ As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.⁵ The date of filing is fixed by postmark or other carrier's date marking.⁶

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

⁵ See *Y.D.*, Docket No. 23-0971 (issued December 7, 2023); *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

⁶ See 20 C.F.R. § 10.616(a).

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.⁷ Specifically, the Board has held that OWCP has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to FECA, which provided the right to a hearing,⁸ when the request is made after the 30-day period for requesting a hearing,⁹ when the request is for a second hearing on the same issue,¹⁰ and when the request is made after a reconsideration request was previously submitted.¹¹ In these instances, OWCP will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.¹²

ANALYSIS

The Board finds that OWCP properly denied appellant's request for a hearing before an OWCP hearing representative, pursuant to 5 U.S.C. § 8124.

The case record establishes that appellant requested a hearing on July 4, 2023, after she had previously requested reconsideration on February 2, 2023. Hence, the Board finds that she was not entitled to a hearing as a matter of right.¹³ OWCP, in its discretion, then properly considered appellant's request and determined that the request was denied for the reason that the issue of the case could equally well be addressed by requesting reconsideration and submitting new evidence.¹⁴

The Board has held that as the only limitation on OWCP's authority is reasonableness. Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to logic and deductions from known facts.¹⁵ The Board thus finds that OWCP properly denied appellant's request for a hearing.

⁷ *D.H.*, Docket No. 23-0910 (issued November 30, 2023); *Henry Moreno*, 39 ECAB 475, 482 (1988).

⁸ *S.T.*, Docket No. 22-1018 (issued April 10, 2023); *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

⁹ *E.R.*, Docket No. 20-1110 (issued December 23, 2020); *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

¹⁰ *D.M.*, Docket No. 19-0686 (issued November 13, 2019); *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

¹¹ *D.H.*, *supra* note 7; *R.H.*, Docket No. 07-1658 (issued December 17, 2007); *S.J.*, Docket No. 07-1037 (issued September 12, 2007). Section 10.616(a) of OWCP's regulations provides that the claimant seeking a hearing must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision. 20 C.F.R. § 10.616(a).

¹² *See supra* note 8.

¹³ *See supra* note 11.

¹⁴ *See S.J.*, *supra* note 11.

¹⁵ *See S.I.*, Docket No. 22-0538 (issued October 3, 2022); *R.Z.*, Docket No. 10-1915 (issued May 19, 2011).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for a hearing before an OWCP hearing representative, pursuant to 5 U.S.C. § 8124.

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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