United States Department of Labor Employees' Compensation Appeals Board

L.F., Appellant)
and) Docket No. 11-1505
DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY) Issued: February 15, 2012
ADMINISTRATION, Ironton, OH, Employer))
Appearances: Rick W. Hanna, for the appellant	Case Submitted on the Record

Office of Solicitor, for the Director

ORDER REMANDING CASE

Before: RICHARD J. DASCHBACH, Chief Judge ALEC J. KOROMILAS, Judge

On June 14, 2011 appellant, through her representative, filed a timely appeal from a December 28, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease claim and a February 24, 2011 nonmerit decision denying her request for a hearing as untimely filed. The Board docketed the appeal as No. 11-1505.

COLLEEN DUFFY KIKO, Judge

The Board, having duly reviewed the case record, finds that OWCP erred in denying appellant's request for an oral hearing as untimely filed. Section 8124 of the Federal Employees' Compensation Act states unequivocally that a claimant not satisfied with a decision of OWCP has a right, upon timely request, to a hearing before a representative of OWCP. A claimant is not entitled to a hearing as a matter of right if the request is not made within 30 days of the date of issuance of OWCP's decision as determined by the postmark or other carrier's date marking of the request.²

¹ 5 U.S.C. § 8124(b)(1); see A.B., 58 ECAB 546 (2007); Joe Brewer, 48 ECAB 411 (1997).

² 20 C.F.R. § 10.616(a); see Federal (FECA) Procedure Manual, Part 2 -- Claims, Hearings and Reviews of the Written Record, Chapter 2.1601.4(a) (December 2002).

Following OWCP's December 28, 2010 decision, appellant requested an oral hearing in a form sent by facsimile on January 26, 2011. She had 30 calendar days from OWCP's December 28, 2010 decision or until January 27, 2011 to request an oral hearing. As appellant sought a hearing in a form sent January 26, 2011, her request was timely and she was entitled to a hearing as a matter of right.

As appellant's hearing request was timely filed, the Board will set aside the February 24, 2011 decision and remand the case for OWCP to schedule an oral hearing.³

IT IS HEREBY ORDERED THAT the February 24, 2011 and December 28, 2010 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: February 15, 2012 Washington, DC

> Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

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

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

³ In view of the Board's decision regarding the timeliness of appellant's request for a hearing before OWCP, it is premature to address the issue of whether she sustained an occupational disease due to exposure to mold.