

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

T.R., Appellant

and

**DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Flint MI, Employer**

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**Docket No. 13-297
Issued: April 24, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 20, 2012 appellant filed a timely appeal of the May 25, 2012 decision of the Office of Workers' Compensation Programs (OWCP) which denied her request for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether OWCP properly denied appellant's request for an oral hearing.

FACTUAL HISTORY

On February 16, 2012 appellant, then a 43-year-old revenue agent, filed a traumatic injury claim alleging that, on February 1, 2012, while retrieving taxpayer documents from her

¹ 5 U.S.C. §§ 8101-8193.

car, fell injuring her back, right shoulder, neck and knees. She stopped work on February 2, 2012 and returned on February 6, 2012. The employing establishment noted that appellant was in the performance of duty at the time of the incident.

By letter dated February 22, 2012, OWCP requested that appellant submit additional information including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed back injury.

Appellant was initially treated by Dr. Andrea Towers, a chiropractor, from February 2 to March 16, 2012 for nerve root compression of the cervical, thoracic and lumbar spine. In work excuse slips dated February 2, 16 and 28, 2012, Dr. Towers noted that appellant was unable to work due to nerve root compression of the cervical, thoracic and lumbar spine. She noted that spinal adjustments were performed in the cervical, thoracic and lumbar region with mechanical traction. In a March 13, 2012 duty status report, Dr. Towers diagnosed misalignment of C5 and L5 spines and noted that appellant could return to work with restrictions. On March 16, 2012 she indicated that appellant slipped and fell at work and had pain in all levels. On February 2 and 17, 2012 appellant was treated by a physician's assistant for a medical condition and was off work from February 2 to 6, 2012. In a March 20, 2012 attending physician's report, Dr. Keith McKenzie, a family practitioner, noted that on February 1, 2012 appellant was walking and slipped on ice and fell. He diagnosed strain/sprain contusion of both shoulders, neck and thoracic, cervical and lumbar spine. Dr. McKenzie noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. In a March 9, 2012 statement, appellant indicated that she slipped on snow, ice and salt.

In a decision dated March 27, 2012, OWCP denied appellant's claim for compensation on the grounds that the medical evidence failed to establish that the claimed medical condition was related to the established work-related event.

In an appeal request form dated April 3, 2012 and postmarked April 27, 2012, appellant requested an oral hearing. With her request, she submitted additional evidence.

In a decision dated May 25, 2012, OWCP denied appellant's request for an oral hearing. It found that the request was not timely filed. Appellant was informed that her case had been considered in relation to the issues involved, and that the request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered.

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 her claim before a representative of the Secretary."² 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

² 5 U.S.C. § 8124(b)(1).

record by a representative of the Secretary.³ 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.⁴ 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.⁵ OWCP's procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).⁶

ANALYSIS

Appellant requested a hearing in an appeal form dated April 3, 2012 and postmarked April 27, 2012. The evidence of record reflects that OWCP's decision was issued on March 27, 2012; therefore, the Board finds that appellant's hearing request is not timely. The 30-day time period for determining the timeliness of her hearing request commences on the first day following the issuance of OWCP's decision.⁷ As OWCP's decision was issued on March 27, 2012, the 30-day period for requesting a hearing began to run on from March 28, 2012 and the last or 30th day was April 26, 2012. Since appellant's hearing request was postmarked April 27, 2012, it was untimely as it fell on the 31st day after the issuance of OWCP's decision. Accordingly, appellant was not entitled to a hearing as a matter of right.

Therefore, OWCP was correct in finding in its May 25, 2012 decision that appellant was not entitled to an oral hearing as a matter of right because her request was not made within 30 days of OWCP's March 27, 2012 decision.

OWCP also notified appellant that it had considered the matter in relation to the issue involved and indicated that additional argument and evidence could be submitted with a request for reconsideration. It has broad administrative discretion in choosing means to achieve its general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.⁸ There is no indication that OWCP abused its discretion in this case in finding that appellant could further pursue the matter through the reconsideration process.

Consequently, OWCP properly denied appellant's request for an oral hearing.

³ 20 C.F.R. §§ 10.616, 10.617.

⁴ 20 C.F.R. § 10.616(a).

⁵ *Delmont L. Thompson*, 51 ECAB 155 (1999); *Eddie Franklin*, 51 ECAB 223 (1999).

⁶ See *R.T.*, Docket No. 08-408 (issued December 16, 2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

⁷ See *Donna A. Christley*, 41 ECAB 90, 91 (1989). See also *John B. Montoya*, 43 ECAB 1148, 1151-52 (1992).

⁸ *Samuel R. Johnson*, 51 ECAB 612 (2000).

On appeal, appellant asserted that she submitted sufficient medical evidence to support that her diagnosed condition was work related. As explained, the Board does not have jurisdiction to review the merits of the claim, only whether appellant filed a timely request for an oral hearing. As noted above, the hearing request was made more than 30 days after issuance of the March 27, 2012 OWCP decision and was untimely and there was no indication that OWCP abused its discretion in finding that appellant could further pursue the matter through the reconsideration process.⁹

CONCLUSION

The Board further finds that OWCP properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1).

ORDER

IT IS HEREBY ORDERED THAT the May 25, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 24, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁹ With her request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).