

FACTUAL HISTORY

On July 25, 2011 appellant, then a 60-year-old transportation security officer, filed a traumatic injury claim alleging that on the same day she strained her back when she was conducting a bag search and pulled a television out of some luggage. She worked intermittently thereafter.

Appellant was initially treated on October 18, 2011 by a physician's assistant for low back pain which occurred on July 25, 2011 after lifting a television out of a bag. The physician's assistant diagnosed low back pain with bilateral leg pain and advised that appellant could return to work with restrictions. On November 23, 2011 appellant was treated by Dr. Joseph D. Stern, a Board-certified neurologist, for low back pain which started on July 29, 2011 after a lifting incident at work. Dr. Stern noted an x-ray of the lumbar spine revealed scoliosis, spondylolisthesis and degenerative disc disease at L1-2 and L4-5. He noted findings upon physical examination and diagnosed low back and bilateral lower extremity pain. A magnetic resonance imaging (MRI) scan dated December 2, 2011 revealed grade 1 spondylolisthesis at L4-5, spinal and lateral recess stenosis at L4-5, L2-3 and bulging discs at T12-L1, L1-2 and L2-3.

On December 21, 2011 appellant filed a CA-7, claim for compensation for total disability for the period December 18 to 31, 2011.

By letter dated January 3, 2012, OWCP advised appellant that her claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It indicated that appellant's claim was administratively handled to allow medical payments up to \$1,500.00; however, the merits of the claim had not been formally adjudicated. OWCP advised that, because she filed a claim for wage loss, her claim would be formally adjudicated. It 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 her had contributed to her claimed back injury.

Appellant submitted a January 22, 2012 statement and indicated that on July 25, 2011, while examining a bag she lifted a television out of some luggage and had a pull in her back. She noted that she continued to experience low back pain radiating into her legs and sought medical treatment. On December 19, 2011 appellant was treated by Dr. Stern who noted her continued complaints of back pain and recommended physical therapy and pain medicine. Also submitted were physical therapy reports dated January 6, 2012.

In a decision dated February 7, 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 February 23, 2012 and postmarked May 29, 2012, appellant requested an oral hearing. Appellant submitted a report from Dr. Stern dated November 23, 2011 and a narrative statement dated January 22, 2012, all previously of record. Also submitted were physical therapy reports dated December 22, 2011 to February 13, 2012.

In a decision dated October 9, 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 his [or her] claim before a representative of the Secretary."³ Section 10.617 and 10.618 of the federal regulations implementing this section of FECA provides 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.⁴ 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.⁵ 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.⁶ Its 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).⁷

ANALYSIS

Appellant requested a hearing in an appeal form dated February 23, 2012 and postmarked May 29, 2012. As the hearing request was made more than 30 days after issuance of the February 7, 2012 OWCP decision, appellant's request for an oral hearing was untimely filed and she is not entitled to an oral hearing as a matter of right.⁸

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

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. §§ 10.616, 10.617.

⁵ *Id.* at § 10.616(a).

⁶ *Delmont L. Thompson*, 51 ECAB 155 (1999); *Eddie Franklin*, 51 ECAB 223 (1999).

⁷ *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).

⁸ On appeal, appellant asserts that she mailed a hearing request on February 23, 2012. However, the record contains no evidence of an earlier hearing request than the one that was postmarked May 29, 2012.

which are contrary to both logic and probable deductions from established facts.⁹ 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.

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 February 7, 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.

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 October 9, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁹ *Samuel R. Johnson*, 51 ECAB 612 (2000).