

FACTUAL HISTORY

On May 1, 2017 appellant, then a 55-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she tore her right rotator cuff lifting equipment while in the performance of duty. She stopped work on May 2, 2017.

By decision dated June 14, 2017, OWCP denied appellant's traumatic injury claim. It found that the medical evidence was insufficient to establish a diagnosed condition causally related to the accepted May 1, 2017 employment incident.

In an appeal request form dated and postmarked March 22, 2019, appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated April 4, 2019, OWCP determined that appellant was not entitled to an oral hearing before an OWCP hearing representative as a matter of right under section 8124(b) because her March 22, 2019 hearing request was not made within 30 days of its June 14, 2017 decision. It considered whether to grant a discretionary hearing, but determined that the matter could equally well be addressed by requesting reconsideration and providing new evidence supporting that she sustained an employment-related condition.

LEGAL PRECEDENT

Section 8124 of FECA, concerning a claimant's entitlement to a hearing before an OWCP hearing representative, provides that a claimant is entitled to a hearing before an OWCP representative when a request is made 30 days after issuance of an OWCP final decision.²

A hearing is a review of an adverse decision by an OWCP's hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.³ A request for either an oral hearing or a review of the written record must be sent, in writing, within 30 days of the date of the decision for which the hearing is sought.⁴ A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision.⁵

OWCP has discretion to grant or deny a request that is made after the 30-day period for requesting an oral hearing or review of the written record and must properly exercise such discretion.⁶

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.615.

⁴ *Id.* at § 10.616(a); *B.V.*, Docket No. 18-1473 (issued April 23, 2019).

⁵ *K.L.*, Docket No. 19-0480 (issued August 23, 2019).

⁶ 20 C.F.R. § 10.616(b); *see also F.M.*, Docket No. 18-0161 (issued May 18, 2018).

ANALYSIS

The Board finds that OWCP properly denied appellant's March 22, 2019 request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

OWCP's regulations provide that the hearing request must be sent within 30 days of the date of the decision for which a hearing is sought.⁷ As appellant's request was postmarked⁸ March 22, 2019, more than 30 days after OWCP's June 14, 2017 merit decision, it was untimely filed and she was not entitled to an oral hearing as a matter of right.⁹

OWCP has the discretionary power to grant an oral hearing even if the claimant is not entitled to a review as a matter of right. The Board finds that OWCP, in its April 4, 2019 nonmerit decision, properly exercised its discretion by indicating that it had considered the matter and had denied appellant's request for oral hearing because her claim could be equally well addressed through a reconsideration application. Because reconsideration exists as an alternative appeal right to address the issue raised by OWCP's June 14, 2017 merit decision, the Board finds that OWCP has not abused its discretion in denying appellant's untimely hearing request.¹⁰

On appeal appellant asserts that she received unpaid medical bills and raised arguments regarding the merits of her claim. The only issue before the Board, however, is whether OWCP properly denied her request for an oral hearing as untimely filed. As the Board lacks jurisdiction to review the underlying merits of appellant's claim, it cannot review her arguments regarding OWCP's failure to accept her occupational disease claim and reimburse her for medical treatment.¹¹

CONCLUSION

The Board finds that OWCP properly denied appellant's March 22, 2019 request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

⁷ See *supra* note 4.

⁸ Under OWCP's regulations and procedures, the timeliness of a request for a hearing is determined on the basis of the postmark of the envelope containing the request. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (October 2011).

⁹ S.A., Docket No. 19-0613 (issued August 22, 2019).

¹⁰ See *J.N.*, Docket No. 18-0646 (issued January 28, 2019).

¹¹ *A.N.*, Docket No. 18-0843 (issued December 11, 2018).

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 17, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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