

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

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T.T., Appellant )

and )

U.S. POSTAL SERVICE, TARZANA POST )  
OFFICE, Tarzana, CA, Employer )

\_\_\_\_\_ )

**Docket No. 19-1306  
Issued: August 3, 2020**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 27, 2019 appellant filed a timely appeal from a May 15, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> As more than 180 days have elapsed from OWCP's last merit decision, dated October 1, 2018, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). By order dated July 31, 2020, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 19-1306 (issued July 31, 2020). The Board's *Rules of Procedure* provide that an appeal in which a request for oral argument is denied by the Board will proceed to a decision based on the case record and the pleadings submitted. 20 C.F.R. § 501.5(b).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the May 15, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* 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 evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether OWCP properly denied appellant's request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124(b).

## **FACTUAL HISTORY**

On June 26, 2011 appellant, then a 49-year-old sales services distribution associate, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome, tennis elbow, and a cervical strain or sprain due to factors of her federal employment, including pushing, pulling, and lifting. She indicated that she first became aware of her conditions and first realized that they were caused or aggravated by her federal employment on April 10, 2010. On the reverse side of the claim form, the employing establishment indicated that appellant did not stop work. On November 1, 2011 OWCP accepted the claim for bilateral carpal tunnel syndrome and lateral epicondylitis.

On June 29, 2012 appellant filed an amended Form CA-2 alleging that she sustained neck and shoulder pain due to the same factors of her federal employment. She indicated that she first became aware of these additional conditions and first realized that they were caused or aggravated by her federal employment on April 10, 2010. On the reverse side of the claim form, the employing establishment indicated that appellant did not stop work.

Appellant retired on November 14, 2012. On November 7, 2014 OWCP accepted the additional conditions of other affectation of the right shoulder region not elsewhere classified, spinal stenosis in the cervical region, and bilateral recurrent dislocation of the shoulder region. It did not pay appellant any wage-loss compensation on the supplemental or periodic rolls as a result of these accepted conditions.

In an April 19, 2018 medical report, Dr. Jacob Tauber, Board-certified in orthopedic surgery, diagnosed bilateral carpal tunnel syndrome, bilateral lateral epicondylitis, cervical spinal stenosis, bilateral recurrent shoulder dislocation, and bilateral other conditions of the shoulder region.

OWCP received progress reports from Dr. Tauber dated May 24 and June 28, 2018.

OWCP referred appellant for a second opinion evaluation with Dr. Clive Segil, a Board-certified orthopedic surgeon, to determine the status of appellant's accepted conditions. In a July 12, 2018 report, Dr. Segil diagnosed lumbar and cervical spine sprains; bilateral shoulder, elbow, wrist, and hand sprains; and a left knee sprain. He opined that he had not found any injury-related factors of disability. Dr. Segil noted that appellant's subjective complaints were normal and that appellant had not suffered residuals of her accepted employment-related conditions. He indicated that appellant required no further medical treatment.

Dr. Tauber, in an August 16, 2018 report, diagnosed cervical stenosis, lateral epicondylitis, shoulder conditions, and carpal tunnel syndrome. He recommended a pain management consultation and a follow-up appointment.

In an August 28, 2018 notice of proposed termination, OWCP proposed terminating appellant's medical benefits because the medical evidence of record established that she no longer had residuals from accepted work-related conditions. It determined that the weight of the medical

evidence rested with Dr. Segil's July 12, 2018 medical report. OWCP afforded appellant 30 days to submit additional evidence or argument. No additional evidence or argument was received.

By decision dated October 1, 2018, OWCP terminated appellant's medical benefits effective that date. It found that the medical evidence of record established that she had no further residuals causally related to her accepted work-related conditions.

In a form dated and postmarked April 23, 2019, appellant requested an oral hearing, in the form of a telephonic hearing, before a representative of OWCP's Branch of Hearings and Review.

By decision dated May 15, 2019, OWCP's Branch of Hearings and Review denied appellant's hearing request. It found that the request was untimely filed as it was postmarked on April 23, 2019, more than 30 days after OWCP's October 1, 2018 decision. After exercising its discretion, OWCP further found that the issue in the case could equally well be addressed through the reconsideration process.

### **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."<sup>4</sup> 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 record by a representative of the Secretary.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

OWCP's procedures provide that the request is timely if it was mailed (as determined by the postmark or other carrier's date marking) within 30 days of the date of the district office's decision. If the postmark is illegible, the request will be deemed timely unless OWCP has kept evidence of date of delivery in the record reflecting that the request is untimely.<sup>8</sup>

### **ANALYSIS**

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

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<sup>4</sup> 5 U.S.C. § 8124(b).

<sup>5</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>6</sup> *Id.* at § 10.616(a).

<sup>7</sup> *See D.R.*, Docket No. 19-1899 (issued April 15, 2020).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (October 2011).

OWCP's regulations provide that the request for an oral hearing must be made within 30 days of the date of the decision for which a review is sought. Because appellant's hearing request was postmarked April 23, 2019, it postdated OWCP's October 1, 2018 merit decision by more than 30 days and is therefore untimely. Appellant is therefore not entitled to an oral hearing as a matter of right.<sup>9</sup>

Although appellant's April 23, 2019 request for a hearing was untimely, OWCP has the discretionary authority to grant the request and it must exercise such discretion.<sup>10</sup> The Board finds that the hearing representative properly exercised discretion in the May 15, 2019 decision by determining that the issue in the case could be equally well addressed by a request for reconsideration before OWCP along with the submission of new evidence relevant to the issue at hand.

The Board has held that the only limitation on OWCP's authority is reasonableness. 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.<sup>11</sup> The Board finds that the evidence of record does not indicate that OWCP abused its discretion by denying appellant's request for an oral hearing and thus OWCP properly denied her oral hearing request.<sup>12</sup>

### **CONCLUSION**

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

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<sup>9</sup> See *P.C.*, Docket No. 19-1003 (issued December 4, 2019).

<sup>10</sup> *R.H.*, Docket No. 19-1488 (issued February 20, 2020).

<sup>11</sup> *Id.*

<sup>12</sup> See *J.O.*, Docket No. 17-0789 (issued May 15, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 15, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 3, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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