

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

_____)	
J.C. claiming as widow of S.C., Appellant)	
)	
and)	Docket No. 24-0576
)	Issued: August 28, 2024
DEPARTMENT OF THE INTERIOR,)	
NATIONAL PARKS SERVICE, BUREAU OF)	
LAND MANAGEMENT, OFFICE OF FIRE &)	
AVIATION, Idaho Falls, ID, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 7, 2024 appellant filed a timely appeal from a December 13, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from the last merit decision, dated June 8, 2023, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, she asserted that oral argument should be granted because she had requested an appeal on multiple occasions without response. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On October 21, 2022 the employing establishment, on behalf of the employee, who was then a 42-year-old forestry technician, filed a traumatic injury claim (Form CA-1) alleging that on October 17, 2022 the employee experienced chest pains and heart palpitations after hiking several miles on steep and rugged slopes while in the performance of duty. The employing establishment explained that after hiking, the employee drove into town for supplies and while there he developed chest pains and called for emergency assistance.

In an official superior's report of employee's death (Form CA-6) dated October 26, 2022, the employing establishment indicated that the employee had died on October 17, 2022 after flagging unit boundaries, which involved hiking several miles in a large elevation gain on steep and rugged slopes. It indicated that the employee was in the performance of duty when his injury occurred.

Appellant provided the employee's November 1, 2022 death certificate signed by Dr. Frank Suttman Orth, an osteopath, which listed his cause of death as cardiac arrest due to cardiac ischemia with other significant contributing conditions of hypertension, hypercholesterolemia, and tobacco abuse.

In a development letter dated November 2, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence needed. OWCP afforded appellant 30 days to submit the necessary evidence.

On November 8, 2022 appellant, the employee's widow, filed a claim for compensation by widow, widower, and/or children (Form CA-5), alleging that the employee was injured and passed away on October 17, 2022. Dr. Orth completed the attending physician's report portion of the Form CA-5 and reported that cardiac arrest was the direct cause of death and that the contributory cause was cardiac ischemia. He noted that the employee had previously experienced myocardial infarction. Dr. Orth indicated by checking a box marked "Yes" that the death of the employee was due to the employment injury and further related that he experienced exertional activity leading to chest pain.

By decision dated June 8, 2023, OWCP denied appellant's claim for survivor's benefits finding that the evidence of record was insufficient to establish that the employee's death was due to the accepted October 17, 2022 employment incident.

On December 7, 2023 OWCP scanned into the Employees' Compensation Operations & Management Portal (ECOMP) appellant's June 16, 2023 request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated December 13, 2024, OWCP denied appellant's request for an oral hearing, finding that it was untimely filed *via* OWCP's ECOMP on December 7, 2023. It further

exercised its discretion and determined that the issue in this case could equally well be addressed by requesting reconsideration before OWCP, along with the submission of new evidence.

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 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.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, or the date received in ECOMP, 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

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).

OWCP’s regulations provide that the request for a hearing or review of the written record must be made within 30 days of the date of the decision for which a review is sought.⁷ The evidence of record establishes that the June 8, 2023 decision was properly mailed to appellant at her last known address of record and was not returned to OWCP as undeliverable. Because her request for an oral hearing was received in ECOMP December 7, 2023, more than 30 days after OWCP’s June 8, 2023 decision, it was untimely filed. Appellant was, therefore, not entitled to an oral hearing as a matter of right.⁸

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.⁹ The Board finds that, in the December 13, 2023 decision, OWCP properly

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. §§ 10.616, 10.617.

⁵ *Id.* at § 10.616(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024).

⁶ *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁷ *Supra* note 5.

⁸ *See K.B.*, Docket No. 21-1038 (issued February 28, 2022); *M.F.*, Docket No. 21-0878 (issued January 6, 2022); *see also P.C.*, Docket No. 19-1003 (issued December 4, 2019).

⁹ *Id.*

exercised its discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration, along with the submission of additional evidence.

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, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.¹⁰ The Board finds that the evidence of record does not indicate that OWCP abused its discretion in connection with its denial of appellant's request for an oral hearing.

Accordingly, 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).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the December 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 28, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ *Id.*; see also *Daniel J. Perea*, 42 ECAB 214, 221 (1990).