

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

D.G., Appellant)	
)	
and)	Docket No. 24-0286
)	Issued: June 21, 2024
DEPARTMENT OF THE ARMY, 3RD)	
INFANTRY DIVISION, LAW ENFORCEMENT)	
COMMAND, Fort Stewart, GA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 17, 2024¹ appellant filed a timely appeal from August 23, September 21, and October 24, 2023 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP).² As more than 180 days has elapsed from the last merit decision, dated July 14, 2023,

¹ Appellant's appeal form notes that she sought an appeal from the July 14, 2023 decision. The 180th day following that OWCP decision was January 10, 2024. As appellant's appeal request was received on January 17, 2024 and postmarked January 11, 2024, the Board is, therefore, without jurisdiction to review the merits of appellant's emotional condition claim.

² 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, it was asserted that oral argument should be granted because she only had one informal hearing before an OWCP representative and desired another hearing on her emotional condition claim which was denied. Appellant also indicated that she was still waiting on OWCP's Branch of Hearings and Review to schedule a hearing. 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.

to the filing of this appeal, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's multiple requests for an oral hearing and review of the written record before the Branch of Hearings and Review, pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On September 27, 2022 appellant, then a 55-year-old equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on July 16, 1997 she sustained an emotional condition in the performance of duty as she was assigned 30 job duties, she was overworked and underpaid. She also alleged that she was subjected to racism and discrimination.

With her claim, appellant submitted a Standard Form 50 personal action form, which documented that she resigned from her equipment control clerk position effective July 22, 1997 due to excessive stress, racism, sexual discrimination, and fear of her life. She also submitted an August 22, 2022 occupational disease claim (Form CA-2) for an emotional condition, which noted July 13, 1997 as the date she first realized her condition was caused or aggravated by her employment. Appellant noted on this claim form that she had originally filed the claim in July 1997.⁴

In a development letter dated October 5, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence

³ 5 U.S.C. § 8101 *et seq.*

⁴ OWCP had assigned appellant's occupational disease claim File No. xxxxxx774. By decision dated February 10, 1998 OWCP denied the claim based on failure to establish a compensable factor of employment. Following the denial of her emotional claim, appellant filed a recurrence claim (Form CA-2a) but was advised, on September 29, 2021, that a claim for a recurrence could not be considered as her claim had been denied. In an August 18, 2022 CA-110 note, appellant was advised she cannot file a new claim using the same date of injury. She was advised of the differences between a traumatic injury and occupational disease claim and that she could file a new claim, with a new date of injury, but questions regarding timeliness would be raised. Appellant's claims under OWCP File Nos. xxxxxx774 and xxxxxx080 have been administratively combined with the latter serving as the master file.

needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted medical and factual evidence. This included traumatic injury claims (Forms CA-1) dated October 17, 2022, with a July 16, 1997 date of injury, alleging an emotional condition.

By decision dated November 10, 2022, OWCP denied the claim, finding that it had not been filed within three years of her last exposure and there was no evidence that her immediate supervisor had actual knowledge within 30 days of the July 16, 1997 date of injury.

On November 25, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held May 8, 2023. During the hearing, appellant was questioned about her prior occupational claim, OWCP File No. xxxxxx774, the work factors alleged in the instant traumatic injury claim with a July 16, 1997 date of injury, and the dates of injuries on both her traumatic and occupational claims. OWCP also received additional medical evidence.

By decision dated July 14, 2023, an OWCP hearing representative affirmed OWCP's November 10, 2022 decision, finding that appellant's September 27, 2022 traumatic injury claim with a July 16, 1997 date of injury was untimely filed.

On August 16, 2023 appellant requested reconsideration of OWCP's July 14, 2023 decision, by letter dated August 13, 2023.⁵ She submitted arguments and additional medical evidence. OWCP received a second copy of the August 13, 2023 letter on August 16, 2023, which it treated as a request for review of the written record by a representative of the Branch of Hearings and Review.

By decision dated August 23, 2023, OWCP denied appellant's request for a review of the written record by a representative of OWCP's Branch of Hearings and Review. It found that she was not entitled to either an oral hearing or a review of the written record as a matter of right as she had previously received a decision by the Branch of Hearings and Review on July 14, 2023. OWCP exercised its discretion and further denied the request as the issue in the case would be addressed equally well by appellant submitting new, relevant evidence or argument which addressed the timeliness issue with a valid request for reconsideration.

On September 8, 2023 appellant requested an oral hearing before a hearing representative of OWCP's Branch of Hearings and Review. She argued the merits of her claim and submitted additional medical evidence.

By decision dated September 21, 2023, OWCP denied appellant's request for an oral hearing by a representative of OWCP's Branch of Hearings and Review. It found that she was not entitled to either an oral hearing or a review as a matter of right as she had previously received a decision by the Branch of Hearings and Review on the same issue. OWCP exercised its discretion

⁵ OWCP has not rendered a decision on appellant's reconsideration request.

and further denied the request as the issue in the case would be addressed equally well by appellant submitting new, relevant evidence or argument which addressed the timeliness issue with a valid request for reconsideration.

On October 17, 2023 appellant again requested an oral hearing before a hearing representative of OWCP's Branch of Hearings and Review. Evidence previously of record was resubmitted.

By decision dated October 24, 2023, OWCP denied appellant's request for an oral hearing by a representative of OWCP's Branch of Hearings and Review. It found that she was not entitled to either an oral hearing or a review as a matter of right as she had previously received a decision by the Branch of Hearings and Review on the same issue. OWCP exercised its discretion and further denied the request as the issue in the case would be addressed equally well by appellant submitting new, relevant evidence or argument which addressed the timeliness issue with a valid request for reconsideration.

On November 18, 2023 appellant requested a hearing before OWCP's Branch of Hearings and Review.

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."⁶ 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.⁷ 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.⁸ 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.⁹

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.¹⁰ Although a claimant who has previously sought reconsideration is

⁶ 5 U.S.C. § 8124(b)(1).

⁷ 20 C.F.R. §§ 10.616, 10.617.

⁸ *Id.* at § 10.616(a).

⁹ *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).

¹⁰ *L.S.*, Docket No. 18-0264 (issued January 28, 2020).

not, as a matter of right, entitled to a hearing or review of the written record,¹¹ the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing following reconsideration.¹² Similarly, the Board has held that the Branch of Hearings and Review may exercise its discretion to conduct a hearing or review the written record where a claimant requests a second hearing or review of the written record on the same issue.¹³

ANALYSIS

The Board finds that OWCP properly denied appellant's requests for an oral hearing or a review of the written record pursuant to 5 U.S.C. § 8124(b).

By decision dated July 14, 2023, an OWCP hearing representative affirmed OWCP's November 10, 2022 decision, finding that appellant's September 27, 2022 traumatic injury claim with a July 16, 1997 date of injury was untimely filed. On August 16, 2023, September 8, and October 17, 2023 requested an oral hearing or review of the written record by a representative of the Branch of Hearings and Review.

Appellant was not entitled to a hearing or another review of the written record by OWCP's Branch of Hearings and Review as a matter of right as she had previously requested a review by an OWCP hearing representative.¹⁴

The Board further finds that OWCP, in its decisions dated August 23, September 21 and October 24, 2023 properly exercised its discretionary authority, explaining that it had considered the matter and denied appellant's request for a hearing or a review of the written record as her claim could equally well be addressed through a reconsideration request.¹⁵

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.¹⁶ In this case, the evidence of record does not indicate that OWCP abused its discretion by denying appellant's multiple requests for either an oral hearing or a review of the written record. Accordingly, the Board finds that OWCP properly denied her requests for an oral hearing or review of the written record, pursuant to 5 U.S.C. § 8124(b).

¹¹ 20 C.F.R. § 10.616(a).

¹² *K.L.*, Docket No. 18-1018 (issued April 10, 2019).

¹³ *O.G.*, Docket No. 23-1034 (issued February 12, 2024); *Id.*

¹⁴ *O.G.*, *id.*; *R.M.*, Docket No. 19-1088 (issued November 17, 2020); *K.L.*, Docket No. 18-1018 (issued April 10, 2019).

¹⁵ *See E.H.*, Docket No. 23-0503 (issued July 20, 2023).

¹⁶ *See S.I.*, Docket No. 22-0538 (issued October 3, 2022); *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214 (1990).

CONCLUSION

The Board finds that OWCP properly denied appellant's requests for an oral hearing or a review of the written record pursuant to 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the August 23, September 21 and October 24, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 21, 2024
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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