

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

D.W., Appellant)	
)	
and)	Docket No. 25-0019
)	Issued: November 22, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
WEST CONSOLIDATED PATIENT ACCOUNT)	
CENTER, Las Vegas, NV, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 8, 2024 appellant filed a timely appeal from a September 26, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days have elapsed from OWCP's last merit decision, dated December 21, 2023, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this claim.

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 22, 2013 appellant, then a 46-year-old medical reimbursement technician, filed an occupational disease claim, (Form CA-2) alleging that she developed carpal tunnel syndrome due to factors of her federal employment, including repetitive computer data entry. She noted that she first became aware of her condition and realized its relation to her federal employment on March 16, 2013. Appellant did not immediately stop work. On October 21, 2013 OWCP accepted the claim for bilateral carpal tunnel syndrome and bilateral trigger finger. It paid appellant wage-loss compensation on the supplemental rolls, effective October 30, 2013, and on the periodic rolls, effective January 12, 2014.²

In a February 18, 2021 letter, OWCP scheduled a second opinion examination with Dr. Brent Adamson, a Board-certified orthopedist, to determine the status of her accepted employment-related conditions.

On November 18, 2022 OWCP advised appellant of its proposed termination of her wage-loss compensation. It afforded her 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination. No response was received.

By decision dated June 1, 2023, OWCP finalized the termination of appellant's wage-loss compensation benefits effective that same day.

On June 14, 2016 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. OWCP subsequently changed her request to a review of the written record following her failure to attend the oral hearing.

By decision dated December 21, 2023, OWCP's hearing representative affirmed the June 1, 2023 termination decision.

On September 22, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated September 26, 2024, OWCP denied appellant's request for an oral hearing. It found that, because she had "already received a decision by the Branch of Hearings and Review" issued on December 21, 2023, she was not, as a matter of right, entitled to either an oral hearing or a review of the written record on the same issue. OWCP exercised its discretion and further found that her request could equally well be addressed by requesting reconsideration and submitting evidence not previously considered. It also indicated that, alternatively, appellant could file an appeal with the Board.

LEGAL PRECEDENT

Section 8124(b) of FECA, concerning a claimant's entitlement to a hearing, states that: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with

² Appellant voluntarily resigned, effective August 23, 2013.

a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his or her claim before a representative of the Secretary.”³ Section 10.615 of OWCP’s federal regulations, implementing this section of FECA, provides that a claimant who requests a hearing can choose between two formats, either an oral hearing or a review of the written record by an OWCP hearing representative.⁴ As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.⁵ The date of filing is fixed by postmark or other carrier’s date marking,⁶ or the date received in Employees’ Compensation and Management Portal (ECOMP), and before the claimant has requested reconsideration.⁷

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 it must exercise this discretionary authority in deciding whether to grant a hearing.⁸ Specifically, the Board has held that OWCP has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to FECA which provided the right to a hearing,⁹ when the request is made after the 30-day period for requesting a hearing,¹⁰ when the request is for a second hearing/review of the written record on the same issue,¹¹ and when the request is made after a reconsideration request was previously submitted.¹² In these instances, OWCP will determine whether a discretionary hearing should be granted or, if not, and will so advise the claimant with reasons.¹³

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

⁵ T.A., Docket No. 18-0431 (issued November 7, 2018); *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

⁶ 20 C.F.R. § 10.616(a).

⁷ *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024).

⁸ T.A., *supra* note 5; *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁹ C.A., Docket No. 17-0944 (issued May 15, 2018); *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

¹⁰ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

¹¹ *See Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

¹² R.H., Docket No. 07-1658 (issued December 17, 2007); S.J., Docket No. 07-1037 (issued September 12, 2007). Section 10.616(a) of OWCP’s regulations provides that the claimant seeking a hearing must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision. 20 C.F.R. § 10.616(a).

¹³ *Supra* note 7.

ANALYSIS

The Board finds that OWCP properly denied appellant's request for an oral hearing before a representative of OWCP's Branch of Hearings and Review, pursuant to 5 U.S.C. § 8124(b).

The most recent decision issued by OWCP prior to appellant's September 20, 2024 hearing request, was the December 21, 2023 decision issued by an OWCP hearing representative. By that decision, the hearing representative affirmed a June 1, 2023 termination of appellant's wage-loss compensation effective June 1, 2023. Consequently, the Board finds that as appellant was not entitled to a second hearing/review of the written record before a representative of OWCP's Branch of Hearings and Review as a matter of right as she had previously requested a hearing by an OWCP hearing representative.¹⁴

OWCP properly exercised its discretion in denying appellant's second request for a hearing/review of the written record and found that appellant's claim could be adequately addressed during the reconsideration process. The Board has held that the only limitation on OWCP's discretionary 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 logic and probable deduction from established facts.¹⁵ In this case, the evidence of record does not establish that OWCP abused its discretion in denying appellant's request for a second hearing/review of the written record. Accordingly, the Board finds that OWCP properly denied her request.¹⁶

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing before a representative of OWCP's Branch of Hearings and Review, pursuant to 5 U.S.C. § 8124(b).

¹⁴ *K.L.*, Docket No. 18-1018 (issued April 10, 2019).

¹⁵ *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *Daniel J. Perea*, 42 ECAB 214 (1990).

¹⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2024
Washington, DC

Patricia H. Fitzgerald, 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