



## **FACTUAL HISTORY**

The case was before the Board on two prior appeals. By decision dated November 25, 2008, the Board found appellant's fall at work on April 25, 2006 was in the performance of duty, as it was an unexplained fall.<sup>2</sup> By decision dated July 13, 2011, the Board affirmed the termination of compensation effective February 22, 2010 based on the medical evidence of record.<sup>3</sup> The history of the case as provided in the prior Board decisions is incorporated herein by reference.

On April 25, 2012 OWCP's Branch of Hearings and Review received an April 13, 2012 letter from appellant's spouse stating that appellant wished to request an oral hearing. Appellant's spouse stated that the April 25, 2006 injury was not a temporary aggravation.<sup>4</sup>

By decision dated May 10, 2012, OWCP's Branch of Hearings and Review found that appellant was not entitled to a hearing, noting the July 13, 2011 Board decision. OWCP's Branch of Hearings and Review also indicated that it had exercised its discretion and denied the request for a hearing on the grounds that the issue in the case could equally well be addressed through the reconsideration process.

## **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides in pertinent part:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this title is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”<sup>5</sup>

OWCP regulations provide, with respect to a request for a hearing, “The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.”<sup>6</sup> With respect to Board decisions, the regulations provide that Board decisions are final as to the subject matter appealed and such decisions are not subject to review except by the Board.<sup>7</sup>

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<sup>2</sup> Docket No. 08-1510 (issued November 25, 2008).

<sup>3</sup> Docket No. 10-2326 (issued July 13, 2011); *petition for recon. denied* (issued February 14, 2012).

<sup>4</sup> The Board notes that OWCP accepted the claim for syncope and collapse, disorder of shoulder bursae and tendons and spondylolisthesis.

<sup>5</sup> 5 U.S.C. § 8124(b)(1).

<sup>6</sup> 20 C.F.R. § 10.616(a); *see also* 20 C.F.R. § 10.609(c), which provides that an employee receiving a merit decision following an application for reconsideration “may not request a hearing on this decision.”

<sup>7</sup> 20 C.F.R. § 501.6(d).

The Board has clarified that OWCP does not have discretionary authority to grant a request for a hearing immediately following a Board decision. OWCP's Branch of Hearings and Review may not assume jurisdiction in the claims process absent a final adverse decision by the Director of OWCP, which has not previously been reviewed.<sup>8</sup>

### ANALYSIS

In the present case, appellant requested a hearing before an OWCP hearing representative by letter dated April 13, 2012. The procedural history of the case indicates that OWCP terminated appellant's compensation for wage-loss and medical benefits effective February 22, 2010. Appellant exercised his appeal rights by requesting reconsideration and OWCP issued an August 26, 2010 merit decision. By decision dated July 13, 2011, the Board affirmed the termination of compensation effective February 22, 2010.

OWCP properly found that the Branch of Hearings and Review did not have jurisdiction to review a decision of the Board. Section 8149 of FECA and its implementing regulations provide that decisions of the Board, on appeals taken from claims of employees, are final as to the subject matter appealed and such decision shall not be subject to review, except by the Board.<sup>9</sup> In this case, the Board issued a final decision regarding the termination of appellant's compensation benefits on July 13, 2011. OWCP did not subsequently issue a final decision. Appellant had no right to request an oral hearing or a review of the written record following the issuance of the Board's July 13, 2011 decision. Because the record contains no final and unreviewed OWCP decision over which OWCP's Branch of Hearings and Review could assume jurisdiction, the Board finds that OWCP properly denied appellant's request for a hearing.<sup>10</sup>

On appeal, appellant's representative argues that there were errors in the July 13, 2011 Board decision and she discusses the termination of compensation issue. Appellant filed a petition for reconsideration of the July 13, 2011 decision and the Board issued an order dated February 14, 2012 denying the petition. The only issue before the Board on appeal is the May 10, 2012 denial of a hearing request before an OWCP hearing representative.

### CONCLUSION

The Board finds that OWCP properly denied the request for a hearing pursuant to 5 U.S.C. § 8124(b)(1).

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<sup>8</sup> See *Robert N. Thomas*, 51 ECAB 180 (1999); *Eileen A. Nelson*, 46 ECAB 377 (1994).

<sup>9</sup> 5 U.S.C. § 8149; 20 C.F.R. § 501.6(c).

<sup>10</sup> See also *J.H.*, Docket No. 09-1406 (issued January 14, 2010); *M.H.*, Docket No. 12-651 (issued August 8, 2012).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 10, 2012 is affirmed.

Issued: February 15, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board