



Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction to review the merits of the claim.<sup>4</sup>

### **ISSUE**

The issue is whether OWCP properly denied appellant's request for an oral hearing.

### **FACTUAL HISTORY**

On June 5, 1992 appellant, then a 39-year-old licensed practical nurse filed a traumatic injury claim (Form CA-1) alleging that on May 14, 1992 he injured his left knee while performing patient care. He stopped work on May 18, 1992 and did not return. OWCP accepted appellant's claim for left medial meniscus tear.

Appellant was treated by Dr. Bruce Ross, a Board-certified orthopedist, who performed an authorized arthroscopic partial medial meniscectomy of the left knee on July 16, 1992. Dr. Ross diagnosed torn medial meniscus of the left knee. A magnetic resonance imaging (MRI) scan of the left knee dated January 15, 1993 revealed a bucket handle tear of the posterior horn and body of the medial meniscus. On March 2, 1993 Dr. Shahid Mian, a Board-certified orthopedist, performed an authorized arthroscopic partial medial meniscectomy, partial lateral meniscectomy, and shaving chondroplasty of the left knee.

Thereafter, in the course of developing the claim, OWCP referred appellant to several second opinion physicians and also to an impartial medical examiner to determine whether a third arthroscopic surgery to appellant's left knee was causally related to his accepted work injury.

In a decision dated February 16, 1995, OWCP denied authorization for left knee arthroscopic surgery as the weight of the medical evidence did not support the need for the procedure as related to his employment. Appellant requested an oral hearing before an OWCP hearing representative.

In a decision dated October 13, 1995, an OWCP hearing representative affirmed the decision dated February 16, 1995.

On November 19, 2014 the employing establishment offered appellant a limited-duty position as a financial account technician, with a tour of duty of 7:30 a.m. to 4:00 p.m. and salary of \$53,011.00 a year. The position was effective December 14, 2014. The position was in conformance with the medical restrictions provided by a second opinion physician.

In a January 2, 2015 letter, OWCP advised appellant that the job offer constituted suitable work. Appellant was informed that he had 30 days to accept the position or provide reasons for

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> Subsequent to the April 7, 2015 merit decision appellant submitted new evidence. The Board has no jurisdiction to review evidence which was not before OWCP at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c)(1). Thus, the Board may not review it for the first time on appeal.

refusing it, or he risked termination of his wage-loss and schedule award benefits. OWCP noted that on November 26, 2014 his representative advised that appellant was not cleared to return to work and was undergoing bilateral knee surgery.

On March 10, 2015 OWCP advised appellant that the position of a limited-duty financial account technician was suitable work. It noted that it considered the reasons given by him for refusing the position and found them to be unacceptable. OWCP afforded appellant 15 additional days to accept the job offer.

In a decision dated April 7, 2015, OWCP terminated appellant's wage-loss and schedule award benefits as he refused an offer of suitable work.

Appellant requested an oral hearing on August 25, 2015. The form was dated and postmarked August 20, 2015. Appellant noted that he would be assisted by his representative and that he preferred video or teleconference. In a May 19, 2015<sup>5</sup> letter addressed to the employing establishment, appellant, through his representative, noted that the employing establishment refused appellant's objections to returning to work. He indicated that appellant still had residuals of the work-related condition and recently had a heart attack. Appellant advised that his current medical condition made him unsuitable for the position offered or any other position. He was under medical orders not to work or perform strenuous activities.

Appellant submitted a hospital admission report from January 7 to 9, 2015 where he was treated by Dr. Gloria Colon Rivas, a cardiologist, who noted that appellant had sustained a myocardial infarction on January 7, 2015. Dr. Rivas noted that appellant was surgically treated with a stent. In an April 1, 2015 report, she opined that appellant was permanently and totally disabled. Dr. Rivas noted that appellant was a high risk for a cardiovascular event, thrombosis, and death.

In a decision dated September 16, 2015, OWCP denied appellant's request for an oral hearing. It found that the request was untimely filed. Appellant was informed that his case had been considered in relation to the issues involved, and that the request was further denied as the issues in this case could equally be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered.

### **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 claim before a representative of the Secretary."<sup>6</sup> Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written

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<sup>5</sup> This letter is actually dated May 19, 2014, but based on the context of the letter and accompanying evidence, this is a typographical error and it should read May 19, 2015.

<sup>6</sup> 5 U.S.C. § 8124(b)(1).

record by a representative of the Secretary.<sup>7</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>8</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>9</sup>

### ANALYSIS

Appellant requested an oral hearing in an appeal request form dated and postmarked on August 20, 2015. This request was more than 30 days after the April 17, 2015 OWCP decision. Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.<sup>10</sup> Because the hearing request was untimely filed, appellant was not entitled to an oral hearing as a matter of right.

OWCP has the discretionary power to grant an oral hearing when a claimant is not entitled to one as a matter of right. It exercised this discretion in its September 16, 2015 decision, finding that appellant's issue could be addressed by requesting reconsideration and submitting additional evidence. This basis for denying his request for a hearing is a proper exercise of OWCP's authority.<sup>11</sup> Accordingly, the Board finds that OWCP properly denied appellant's request for an oral hearing.

On appeal, appellant reiterated that the job offer of a financial account technician was not suitable. However, as noted, the Board does not have jurisdiction over the merits of the claim.

### CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing.

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<sup>7</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>8</sup> *Id.* at § 10.616(a).

<sup>9</sup> *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>10</sup> *William F. Osborne*, 46 ECAB 198 (1994).

<sup>11</sup> *Mary B. Moss*, 40 ECAB 640, 647 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 16, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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