



## ISSUE

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

## FACTUAL HISTORY

On December 10, 2011 appellant, then a 37-year-old supervisory border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that he sustained a gunshot wound to his right foot while apprehending a group of alien suspects while in the performance of duty. He stopped work that day. OWCP accepted the claim for an open fracture of the phalanx of the right fourth toe with traumatic partial amputation of the right fourth toe. Appellant returned to modified work on January 24, 2012 and resumed his regular duties on February 9, 2012.

On December 17, 2012 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated January 8, 2013, OWCP requested that appellant submit an impairment evaluation from his attending physician addressing whether he had obtained maximum medical improvement (MMI) and providing a permanent impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>3</sup>

Appellant subsequently submitted medical evidence in support of her schedule award claim. On June 21, 2013 Dr. Leonard A. Simpson, a Board-certified orthopedic surgeon, serving as a district medical adviser (DMA), reviewed the medical evidence of record. He opined that appellant reached MMI on April 29, 2013 and, under Table 16-2, Foot and Ankle Regional Grid - Lower Extremity Impairment, had two percent right lower extremity impairment.

By decision dated July 30, 2013, OWCP granted appellant a schedule award for two percent permanent impairment of the right lower extremity. The period of that award ran for 5.76 weeks from April 29 to June 8, 2013. OWCP accorded the weight of the medical evidence to the June 21, 2013 report of Dr. Simpson, the DMA.

On August 19, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated August 26, 2024, OWCP denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b). 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.

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

## 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.”<sup>4</sup> 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.<sup>5</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, or the date received in the Employees’ Compensation and Management Portal (ECOMP), and before the claimant has requested reconsideration.<sup>6</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>7</sup>

## 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.<sup>8</sup> Because appellant’s request for an oral hearing was received on August 19, 2024, more than 30 days after OWCP’s July 30, 2013 decision, it was untimely filed. Appellant was, therefore, not entitled to an oral hearing as a matter of right.<sup>9</sup>

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.<sup>10</sup> The Board finds that, in the August 26, 2024 decision, OWCP properly 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

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<sup>4</sup> 5 U.S.C. § 8124(b)(1).

<sup>5</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>6</sup> *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).

<sup>7</sup> *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).

<sup>8</sup> *Supra* note 5.

<sup>9</sup> *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).

<sup>10</sup> *Id.*

exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.<sup>11</sup> 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 as untimely filed, pursuant to 5 U.S.C. § 8124(b).

**ORDER**

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

Issued: November 8, 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

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<sup>11</sup> *Id.*; see also *Daniel J. Perea*, 42 ECAB 214, 221 (1990).