

The Board finds that OWCP violated the provisions of Federal Employees' Compensation Act and its own procedures by failing to provide appellant with an opportunity for a hearing. The statutory right to a hearing under section 8124(b)(1) follows an initial final decision of the Office.¹ A claimant who has received a final adverse decision may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.² OWCP's procedure manual provides for a preliminary review of a case by a hearing representative to determine whether the hearing request is timely and, if not, whether a discretionary hearing should be granted; if OWCP declines to grant a discretionary hearing, the claimant will be advised of the reasons.³ In this case, the record contains evidence and argument regarding appellant's timely request for an oral hearing on May 25, 2009 following the May 4, 2009 LWEC decision. There is no evidence of record, however, that an OWCP hearing representative conducted a preliminary review or responded in any way to the hearing request. Thus, OWCP failed to follow its own procedures, and there remains an outstanding request for an oral hearing that must be considered.

The Board notes that appellant eventually requested reconsideration nearly one year after making a hearing request. OWCP's August 6, 2010 decision denying modification of the original LWEC determination does not, however, cure the procedural defect in this case, namely, that she was deprived of her statutory right to an oral hearing.

The Board finds that this case is not in posture for a decision, as there exists an outstanding request for an oral hearing or review of the written record. The case will be remanded for a proper response to appellant's request. Following this and such other development as deemed necessary, OWCP shall issue an appropriate decision.

¹ *Patricia G. Aiken*, 57 ECAB 441 (2006).

² 20 C.F.R. § 10.616(a).

³ *Belinda J. Lewis*, 43 ECAB 552, 558 (1992); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 6, 2010 decision be set aside and the case remanded for further development consistent with this order of the Board.

Issued: October 26, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board