

respond to the July 19, 2009 reconsideration request.² In a merit decision dated August 17, 2010, OWCP denied modification of the May 14, 2008 decision.

The Board has duly considered the matter and finds that the case is not in posture for decision. Section 8124(b) of the Federal Employees' Compensation Act (FECA) states unequivocally that a claimant not satisfied with a decision of OWCP has a right, upon timely request, to a hearing before a representative of OWCP.³ Any claimant dissatisfied with a decision of OWCP shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.⁴

Appellant's hearing request was postmarked June 4, 2008 and received by OWCP on June 10, 2008, well within 30 days of the May 14, 2008 OWCP decision denying appellant's claim. Appellant's hearing request was therefore timely. While appellant also requested reconsideration on July 16, 2009, the Board has long held that if there are simultaneous requests for a hearing and for reconsideration, OWCP is to proceed with adjudicating the hearing request before reconsideration.⁵ In this case, it was not proper for the claims examiner to exercise discretion that is within the purview of the Branch of Hearings and Review. Inasmuch as appellant's hearing request was timely filed, the Board will set aside the August 17, 2010 decision and remand the case for OWCP to schedule an oral hearing.⁶

² In a decision dated June 2, 2008, OWCP denied appellant's recurrence claim since his primary claim had been denied. On May 12, 2009 it refused to process CA-7 forms claiming compensation on the grounds that the initial claim had been denied.

³ 5 U.S.C. § 8124(b); 20 C.F.R. § 10.616.

⁴ *Claudio Vazquez*, 52 ECAB 496 (2001).

⁵ See *Eddie Franklin*, 51 ECAB 223 (1999); *Mary E. Schipske*, 43 ECAB 318 (1991); *Mary G. Allen*, 40 ECAB 190 (1988); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings & Review of the Written Record*, Chapter 2.1601.3 (October 1992).

⁶ In view of the Board's decision regarding the timeliness of appellant's request for a hearing, the Board will not address the merit issue of whether OWCP properly denied appellant's claim.

IT IS HEREBY ORDERED THAT the August 17, 2010 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for OWCP to schedule a hearing.

Issued: June 28, 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