



On March 1, 2011 appellant requested an oral hearing before an OWCP hearing representative. She submitted another medical report dated May 28, 2009.<sup>4</sup>

In a decision dated March 24, 2011, OWCP denied appellant's request for a hearing. After noting that FECA was unequivocal in setting a 30-day time limitation on requesting a hearing, OWCP denied her request as follows:

“The record shows that the decision of the district [OWCP] was rendered on June 11, 2009, and your request for a review to the Branch of Hearings and Review was postmarked March 1, 2011. Since your request for a review was not made within 30 days, you are not, as a matter of right, entitled to an oral hearing or a review of the written record on your case.”

The Board notes that a request for hearing before the Branch of Hearings and Review must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.<sup>5</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>6</sup> In such a case it must determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.<sup>7</sup>

Here, appellant had 30 days from the date of that decision to make a timely request for a hearing. Because her March 1, 2011 request was untimely filed, OWCP properly found that she was not entitled to a hearing as a matter of statutory right.

OWCP had discretion, nonetheless, to grant appellant's request. It did not exercise that discretion, and did not advise her of the reasons for doing so in the March 24, 2011 decision. Instead, OWCP denied appellant's request solely on the grounds that it was untimely.

The Board has carefully reviewed the March 24, 2011 decision and can find no indication that OWCP considered whether to grant a discretionary hearing.

The Board will therefore set aside the March 24, 2011 decision and remand the case for a proper exercise of OWCP's discretion and an appropriate decision on appellant's untimely request for hearing. Should OWCP exercise its discretion to deny a hearing, it must so advise appellant with reasons.

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<sup>4</sup> The physician's signature was also illegible on this report.

<sup>5</sup> 20 C.F.R. § 10.616(a).

<sup>6</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>7</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

**IT IS HEREBY ORDERED THAT** the March 24, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: November 25, 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