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<b>J.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 12-1699</b>
	)	<b>Issued: February 14, 2013</b>
<b>DEPARTMENT OF THE NAVY, NAVAL</b>	)	
<b>SUPPLY SYSTEMS COMMAND, Gulfport, MS,</b>	)	
<b>Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

On August 9, 2012 appellant filed a timely appeal from a July 26, 2012 nonmerit decision in which an OWCP hearing representative denied his request for a hearing. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the decision denying appellant's hearing request.

The issue is whether OWCP properly denied appellant's request for a hearing. On appeal appellant generally asserts that he is entitled to wage-loss compensation and a schedule award.

This case has previously been before the Board. In a November 15, 2010 decision, the Board affirmed September 29, 2009 and January 4, 2010 OWCP merit decisions that denied

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

appellant's claim for a schedule award.<sup>2</sup> The law and the facts of the previous Board decision are incorporated herein by reference.

On June 25, 2012 appellant requested a hearing. In a July 26, 2012 decision, OWCP denied appellant's request for a hearing on the grounds that the last decision in this case was the November 15, 2010 decision of the Board. It indicated that Board decisions were final, and OWCP's Branch of Hearings and Review did not have jurisdiction to review decisions of the Board. OWCP also advised appellant that the issue in the case could equally be addressed by requesting reconsideration with OWCP.

### **LEGAL PRECEDENT**

A 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.<sup>3</sup> The Board has held that OWCP, in its broad discretionary authority in the administration of FECA has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.<sup>4</sup>

FECA provides OWCP with original jurisdiction in the processing of compensation claims and 5 U.S.C. § 8124(a) provides OWCP with the duty and authority to issue an initial decision on an employee's claim for compensation. Once an initial decision is made in a compensation case, the claimant's rights arise by which the claimant may seek further review of his claim: the right to a hearing before OWCP, the right to reconsideration before OWCP or an appeal to the Board. The Board has clarified that OWCP does not have the discretionary authority to grant a request for hearing immediately following a Board decision. OWCP's Branch of Hearings and Review may not assume jurisdiction in the claims process absent a final adverse decision by the Director. Following the Board's review of OWCP's decision, there is no final decision of OWCP left unreviewed over which the Branch of Hearings and Review can assume jurisdiction to exercise its discretionary appellate authority.<sup>5</sup>

### **ANALYSIS**

In its July 26, 2012 decision, OWCP denied appellant's request for a hearing on the grounds that the last decision in this case was the decision of the Board dated November 15, 2010 in which the Board affirmed September 29, 2009 and January 4, 2010 OWCP decisions. It properly indicated that Board decisions were final, and OWCP's Branch of Hearings and Review

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<sup>2</sup> Docket No. 10-823 (issued November 15, 2010). On July 8, 2008 appellant, a materials handler, sustained employment-related sprains of the right elbow and forearm and right lateral epicondylitis when he injured his arm unloading pallets. He was removed from his position for cause in April 2009.

<sup>3</sup> *Claudio Vazquez*, 52 ECAB 496 (2001).

<sup>4</sup> *Marilyn F. Wilson*, 52 ECAB 347 (2001).

<sup>5</sup> *K.H.*, Docket No.09-385 (issued September 14, 2009); *Robert N. Thomas*, 51 ECAB 180, 180-81 (1999).

did not have jurisdiction to review decisions of the Board.<sup>6</sup> OWCP did not subsequently issue a final decision before appellant requested a hearing. The Board has held that, following the Board's review of OWCP's decision, a claimant does not have the right under 5 U.S.C. § 8124(b)(1) to request a hearing in the absence of a subsequent final OWCP decision.<sup>7</sup> In the instant case, appellant had no right to request a hearing following the issuance of the Board's November 15, 2010 decision because there is no final decision of OWCP left unreviewed over which OWCP's Branch of Hearings and Review could assume jurisdiction to exercise its discretionary appellate authority.<sup>8</sup> Therefore, the Board finds that OWCP properly denied appellant's request for a hearing on July 26, 2012.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> See *id.*; 20 C.F.R. § 501.6(d).

<sup>7</sup> See *id.*

<sup>8</sup> *Id.* See also *Eileen A. Nelson*, 46 ECAB 377 (1994). The Branch of Hearings and Review stated in its July 26, 2012 decision that it had exercised its discretion in denying the request for a hearing. However, as discussed, it is not within OWCP's discretion to grant a hearing immediately following a Board decision. This was harmless error.