

December 28, 2004 when she fell in a hole in the ground at the employing establishment, landing on her knees. Her attending physician, Dr. Jin Xiao, Board-certified in occupational medicine, examined her on April 22, 2005 and diagnosed an irregular tear of the posterolateral aspect of the medial meniscus as demonstrated on a magnetic resonance imaging (MRI) scan. He also found degenerative changes in the left knee which were aggravated by appellant's December 28, 2004 work injury. Appellant returned to limited-duty work on July 22, 2005.

Appellant underwent a second MRI scan on March 1, 2010 which demonstrated a tear of the posterior horn of the medial meniscus of the left knee. On June 26, 2012 Dr. Ronald A. Navarro, a Board-certified orthopedic surgeon, performed a left knee arthroscopy with left partial medial meniscectomy.

OWCP accepted appellant's claim for contusion of the knee, left knee internal derangement, tear of the medial meniscus, and temporary aggravation of osteoarthritis of the left knee.

Appellant filed CA-7 forms requesting a schedule award on July 30 and September 29, 2014.

On June 19, 2014 OWCP referred appellant for a second opinion evaluation with Dr. Mark Bernhard, an osteopath, Board-certified in physical medicine and rehabilitation, to determine her permanent impairment for schedule award purposes. In a report dated August 14, 2014, Dr. Bernhard determined that appellant had reached maximum medical improvement and that she had five percent impairment of her left lower extremity in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

OWCP referred appellant's claim to an OWCP medical consultant who concurred with Dr. Bernhard's impairment rating of five percent of the left lower extremity.

By decision dated November 21, 2014, OWCP granted appellant a schedule award for five percent impairment of the left lower extremity. Appellant submitted a request for an oral hearing on December 23, 2014 which was postmarked that same date.

OWCP's Branch of Hearings and Review issued a decision on May 21, 2015 denying appellant's request for an oral hearing because her request was not made within 30 days of the November 21, 2014 merit decision. It further found that the issue in appellant's claim could be addressed through the submission of evidence in the reconsideration process.

LEGAL PRECEDENT

Section 8124(b) of FECA³ concerning a claimant's entitlement to a hearing before an OWCP representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after

² A.M.A., *Guides*, 6th ed. (2009).

³ 5 U.S.C. §§ 8101-8193.

the date of issuance of the decision, to a hearing on [her] claim before a representative of the Secretary.”⁴ Section 10.615 of OWCP’s regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.⁵ OWCP regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁶

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA,⁷ has the power to hold hearings and reviews of the written record in certain circumstances where no legal provision was made for such reviews and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing or review of the written record.⁸ OWCP procedures, which require OWCP to exercise its discretion to grant or deny a hearing or review of the written record when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.⁹

ANALYSIS

In the instant case, OWCP properly determined appellant’s December 23, 2014 request for an oral hearing was untimely filed as it was made more than 30 days after the issuance of its November 21, 2014 decision. It, therefore, properly denied appellant’s hearing as a matter of right.

OWCP then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. It determined that a hearing was not necessary as the issue in the case was medical and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, OWCP properly denied appellant’s request for a hearing as untimely and properly exercised its discretion in determining to deny her request for a hearing as she had other review options available.

CONCLUSION

The Board finds that OWCP’s Branch of Hearings and Review properly denied appellant’s request for an oral hearing on the basis that the request was untimely and could be addressed through the reconsideration process.

⁴ *Id.* at § 8124(b)(1).

⁵ 20 C.F.R. § 10.615.

⁶ *Id.* at § 10.616(a).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁹ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board