

crane track. The Office accepted his claim for a contusion and tear of the lateral meniscus of the right knee and authorized right knee surgery.

On December 16, 2004 appellant filed a claim for a schedule award. By letter dated December 27, 2004, the Office requested that he submit a medical report from a physician, which stated whether he had reached maximum medical improvement and whether he sustained permanent impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). Appellant was afforded 30 days to submit the requested evidence. He did not respond within the allotted time period.

By decision dated May 19, 2006, the Office denied appellant's claim for a schedule award. It found that appellant failed to submit any medical evidence establishing that he sustained permanent impairment to a scheduled member of the body due to his accepted September 24, 2003 employment-related injuries.

On March 20, 2008 appellant requested an oral hearing before an Office hearing representative. By decision dated May 6, 2008, the Office's Branch of Hearings and Review denied his request for a hearing as it was untimely filed. It further reviewed appellant's request and denied the hearing as it found that the issue of whether he sustained permanent impairment to a scheduled member of the body causally related to his accepted September 24, 2003 employment injury could equally well be addressed by requesting reconsideration and submitting new evidence not previously considered.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of the Office's final decision.¹ A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark or other carrier's date marking² and before the claimant has requested reconsideration.³ However, when the request is not timely filed or when reconsideration has previously been requested, the Office may within its discretion grant a hearing or review of the written record and must exercise this discretion.⁴

ANALYSIS

Appellant's request for an oral hearing was dated March 20, 2008, more than 30 days after the Office's May 19, 2006 decision. Therefore, his request for an oral hearing was not timely and he was not entitled to a hearing as a matter of right. The Branch of Hearings and Review exercised its discretion in denying appellant's request for an oral hearing by finding that

¹ 5 U.S.C. § 8124(b)(1).

² 20 C.F.R. § 10.616(a); *Tammy J. Kenow*, 44 ECAB 619 (1993).

³ *Martha A. McConnell*, 50 ECAB 129, 130 (1998).

⁴ *Id.*

he could request reconsideration and submit evidence not previously considered, which established that he sustained permanent impairment to a scheduled member of the body due to his accepted September 24, 2003 employment-related injuries. The Board finds that the Branch of Hearings and Review did not abuse its discretionary authority in denying appellant's request for a hearing.

CONCLUSION

The Board finds that the Office properly denied appellant's request for an oral hearing as untimely filed.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board