

On appeal, appellant asserts that the medical evidence of record is sufficient to establish his traumatic injury claim.

FACTUAL HISTORY

On August 23, 2010 appellant, then a 32-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right knee injury that day while performing a physical efficiency agility test.

Dr. Joseph J. Giovinazzo, an attending Board-certified orthopedic surgeon, submitted reports from September 29, 2010 to January 12, 2011 noting limited right knee flexion and a history of prior right knee surgery in 2008. A December 10, 2010 MRI (magnetic resonance imaging) scan showed a complete tear of the anterior cruciate ligament and degenerative joint disease.

In a March 2, 2011 letter, OWCP advised appellant of the additional evidence needed to establish his claim. It requested medical evidence supporting a causal relationship between the August 23, 2010 agility test and the claimed right knee injury.

In a March 23, 2011 report, Dr. Giovinazzo recommended arthroscopic right knee surgery.³

By decision dated April 15, 2011, OWCP denied the claim on the grounds that causal relationship was not established. It accepted that the August 23, 2010 incident occurred at the time, place and in the manner alleged, but OWCP found that the medical evidence did not provide a rationalized opinion explaining how or why the incident caused a right knee injury.

In a letter dated April 26, 2011, appellant requested an oral hearing. He enclosed a duplicate copy of Dr. Giovinazzo's March 23, 2011 report.

By decision dated June 3, 2011, OWCP denied appellant's request for a hearing on the grounds that it was not timely filed within 30 days of the April 15, 2011 decision. OWCP further denied appellant's request as the issue in the case could be addressed equally well pursuant to a valid request for reconsideration.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA states unequivocally that a claimant not satisfied with a decision of OWCP has a right, upon timely request, to a hearing before an OWCP representative.⁴ Section 10.615 of Title 20 of the Code of Federal Regulations provide that a

³ Appellant also submitted a computer disc containing copies of Dr. Giovinazzo's reports and the December 10, 2010 MRI scan already of record.

⁴ 5 U.S.C. § 8124(b)(1). *See A.B.*, 58 ECAB 546 (2007); *Joe Brewer*, 48 ECAB 411 (1997).

hearing is a review of an adverse decision by an OWCP hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record.⁵

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 marking of the request.⁶ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.⁷ In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.⁸

ANALYSIS

Appellant claimed that he injured his right knee on August 23, 2010 during an agility training exercise at work. On April 15, 2011 OWCP denied the claim as the medical evidence was insufficient to establish causal relationship. Appellant had 30 days from the date of that decision, or until Monday, May 16, 2011, to make a timely request for a hearing.⁹ His letter requesting an oral hearing was postmarked on May 17, 2011, after the 30-day time period had elapsed. OWCP properly found that appellant's request for an oral hearing was not timely filed under section 8124(b)(1) of FECA and that he was not entitled to a hearing as a matter of right.

OWCP exercised its discretion and denied appellant's request for a hearing on the additional grounds that he could address the causal relationship issue in his case equally well by submitting relevant evidence accompanying a written request for reconsideration. Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP's April 15, 2011 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for an oral hearing.¹⁰

On appeal, appellant asserts that the medical evidence of record is sufficient to establish his traumatic injury claim. As stated above, the Board does not have jurisdiction over the merits of the case on the present appeal.

⁵ 20 C.F.R. § 10.615.

⁶ *Id.* at § 10.616(a).

⁷ *G.W.*, Docket No. 10-782 (issued April 23, 2010). *See also Herbert C. Holley*, 33 ECAB 140 (1981).

⁸ *Id.* *See also Rudolph Bermann*, 26 ECAB 354 (1975).

⁹ The 30th day from Friday, April 15, 2011 was Sunday, May 15, 2011. The Board has held that, in computing a time period, the date of the event from which the designated period of time begins to run shall not be included while the last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday. *John B. Montoya*, 43 ECAB 1148 (1992). The first regular business day after Sunday, May 15, 2011 was Monday, May 16, 2011.

¹⁰ *See Gerard F. Workinger*, 56 ECAB 259 (2005).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 3, 2011 is affirmed.

Issued: June 14, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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