

FACTUAL HISTORY

This case has previously been before the Board.² In the most recent appeal, the Board issued a decision on June 16, 2011 which affirmed OWCP's April 28, 2010 decision finding that appellant was not entitled to a schedule award and June 22, 2010 decision denying his request for a review of the written record.³ The findings of fact as set forth in the Board's prior decisions are hereby incorporated by reference.

On June 21, 2011 appellant requested an oral hearing before an OWCP hearing representative. In a September 13, 2011 decision, OWCP's Branch of Hearings and Review denied his request. It noted that the most recent merit decision in this case was issued by the Board and that OWCP did not have jurisdiction to review decisions of the Board. It further reviewed appellant's request under its discretionary authority and found that the issue regarding his entitlement to a schedule award could equally well be addressed by requesting reconsideration and submitting new evidence.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides:

“Before review under section 8128(a) of this title (related to reconsideration), a claimant for compensation not satisfied with a decision of the Secretary under subsection(a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on [his] claim before a representative of the Secretary.”⁴

FECA provides OWCP with original jurisdiction in the processing of compensation claims and section 8124(a) provides it with the duty and authority to issue an initial decision on an employee's claim for compensation.⁵ Once an initial decision is made in a compensation

² OWCP accepted that appellant, a boilermaker, sustained a back contusion and abrasion as a result of a September 15, 1959 injury which incurred when a sailor dropped a valve from 10 feet above onto his back for the closed period September 15 through 17, 1959. It denied his claim for treatment of a degenerative low back condition or lost compensation occurring after September 17, 1959 as the medical evidence did not establish that his current back condition and resultant disability were causally related to his accepted September 15, 1959 injury. In a November 30, 2006 decision, the Board affirmed OWCP's September 12, 2005 decision which found that appellant failed to submit sufficient medical evidence to establish that his current back condition and resultant disability were causally related to his accepted September 15, 1959 employment-related injuries. The Board also affirmed OWCP's November 16, 2005 decision which denied his request for an oral hearing. Docket No. 06-1652 (issued November 30, 2006). In an October 1, 2007 decision, the Board affirmed OWCP's April 2, 2007 decision which again found that appellant failed to establish a causal relationship between his current back condition and resultant disability and the accepted employment-related injuries. Docket No. 07-1304 (issued October 1, 2007). In a January 14, 2009 decision, the Board affirmed OWCP's May 14, 2008 decision denying appellant's request for further merit review of his claim. Docket No. 08-1800 (issued January 14, 2009).

³ Docket No. 10-847 (issued June 16, 2011).

⁴ 5 U.S.C. § 8124(b)(1).

⁵ *Id.*

case, the claimant's rights arise by which the claimant may seek further review of his claim, the right to a hearing or review of the written record 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 of OWCP.⁶ Following the Board's review of OWCP's decision, there is no final decision of it left unreviewed over which the Branch of Hearings and Review can assume jurisdiction to exercise its discretionary authority.⁷

ANALYSIS

The Board previously reviewed the merits of the case and issued a decision on June 16, 2011 which affirmed OWCP's decision finding that appellant was not entitled to a schedule award. OWCP did not subsequently issue a final decision on the merits. On June 21, 2011 appellant requested a hearing before OWCP's Branch of Hearings and Review. The Board has held that, following its review of OWCP's decision, a claimant does not have the right under 5 U.S.C. § 8124(b)(1) to request an oral hearing or review of the written record in the absence of a final OWCP decision.⁸ The Board finds that appellant had no right to an oral hearing following the Board's June 16, 2011 decision. There is no final OWCP decision left unreviewed over which the Branch of Hearings and Review could assume jurisdiction.⁹ The Board finds, therefore, that OWCP properly denied appellant's request for a hearing.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing before its hearing representative.

⁶ *Patricia G. Aiken*, 57 ECAB 441 (2006); *Eileen A. Nelson*, 46 ECAB 377 (1994).

⁷ *J.H.*, Docket No. 09-1406 (issued January 14, 2010); *Robert N. Thomas*, 51 ECAB 180 (1999).

⁸ *Id.*

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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