



## **FACTUAL HISTORY**

On January 20, 2000 appellant, a 44-year-old clerk, filed an occupational disease claim alleging that her bilateral plantar fasciitis, tendinitis and heel spurs were a result of the duties of her position. OWCP accepted her claim for an aggravation of bilateral plantar fasciitis and bilateral tarsal tunnel syndrome.

In a September 4, 2009 decision, OWCP reduced appellant's wage-loss compensation to zero on the grounds that her actual earnings in a modified clerk position effective November 8, 2007 fairly and reasonably represented her wage-earning capacity.

On May 5, 2011 OWCP denied modification of its wage-earning capacity determination. Attached appeal rights notified appellant that any hearing request must be made within 30-calendar days after the date of the decision, as determined by the postmark of the request.

In a letter postmarked June 8, 2011, appellant requested an oral hearing before an OWCP hearing representative.

On June 28, 2011 OWCP's Branch of Hearings and Review denied appellant's hearing request. Because the request was untimely, OWCP found that appellant was not entitled to a hearing as a matter of right. It nonetheless considered the request but denied a discretionary hearing on the grounds that appellant could equally well pursue the issue in her case by requesting reconsideration.

On appeal, appellant argues the merits of OWCP's wage-earning capacity determination, which the Board has no jurisdiction to review.

## **LEGAL PRECEDENT**

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

"Before review under section 8128(a) of this title, 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 [her] claim before a representative of the Secretary."<sup>3</sup>

The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.<sup>4</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>5</sup> In such a case, OWCP will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.<sup>6</sup>

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<sup>3</sup> 5 U.S.C. § 8124(b)(1).

<sup>4</sup> 20 C.F.R. § 10.616(a).

<sup>5</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>6</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

**ANALYSIS**

Appellant made her June 8, 2011 oral hearing request more than 30 days after OWCP's May 5, 2011 decision denying modification of its wage-earning capacity determination. As it was untimely, she is not entitled to a hearing as a matter of right. OWCP nonetheless considered the request and correctly advised appellant that she could address the issue through the reconsideration process. As appellant could have addressed the issue by requesting reconsideration, the Board finds that OWCP properly exercised its discretion in denying an oral hearing in the matter.<sup>7</sup>

**CONCLUSION**

The Board finds that OWCP properly denied appellant's June 8, 2011 oral hearing request.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 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

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<sup>7</sup> The Board has held that the denial of a hearing on these grounds is a proper exercise of OWCP discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988). The Board notes that there is no time limitation for requesting modification of an existing wage-earning capacity determination.