

claim. In a decision dated April 9, 2014, OWCP found that the request was untimely filed and failed to present clear evidence of error.

Section 8124(b) of the Federal Employees' Compensation Act states unequivocally that a claimant not satisfied with a decision of OWCP has a right, upon timely request, to a hearing before a representative of OWCP.² Any claimant dissatisfied with a decision of OWCP shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, 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.³ If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.⁴

Appellant's hearing request was postmarked August 4, 2011 and was within 30 days of the July 5, 2011 OWCP decision denying appellant's claim. His hearing request was therefore timely. While appellant also requested reconsideration on March 27, 2012 and again on March 22, 2014, the Board has long held that, if there are simultaneous requests for a hearing and for reconsideration, OWCP is to proceed with adjudicating the hearing request before reconsideration.⁵ In this case, it was not proper for the claims examiner to exercise discretion that is within the purview of the Branch of Hearings and Review. Inasmuch as appellant's hearing request was timely filed, the Board will set aside the April 9, 2014 decision and remand the case for OWCP to schedule an oral hearing.

² 5 U.S.C. § 8124(b); 20 C.F.R. § 10.616.

³ 20 C.F.R. § 10.616(a).

⁴ *Claudio Vazquez*, 52 ECAB 496 (2001).

⁵ See *D.M.*, Docket No. 10-2237 (issued June 28, 2011); See *Eddie Franklin*, 51 ECAB 223 (1999); *Mary E. Schipske*, 43 ECAB 318 (1991); *Mary G. Allen*, 40 ECAB 190 (1988); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, Hearings & Review of the Written Record, Chapter 2.1601.3 (October 1992).

IT IS HEREBY ORDERED THAT the April 9, 2014 decision is set aside and the case remanded for OWCP to schedule an oral hearing.

Issued: November 24, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board