



## **FACTUAL HISTORY**

On May 13, 2010 appellant, then a 41-year-old senior patrol agent, filed a traumatic injury claim alleging that on May 2, 2010 he injured his right shoulder, left wrist and both hands when he struggled and was assaulted as he attempted to apprehend an undocumented suspect. He did not stop work.

A May 2, 2010 incident report noted that appellant attempted to apprehend an undocumented suspect at night by the Rio Grande River. The report further noted that he sustained injuries to his right shoulder, both wrists and both hands. A separate May 2, 2010 incident report noted that appellant was involved in a struggle as he attempted to apprehend a suspect. It further advised that he deployed his oleoresin capsicum spray (OC) to restrain the suspect.

In a May 2, 2010 report, Dr. Edurado Borjon, a family medicine practitioner, diagnosed wrist and shoulder pain. He advised that appellant was able to return to work on May 7, 2010.

By letter dated June 2, 2010, OWCP notified appellant that the present evidence of record was insufficient to establish his claim. Appellant was advised to submit medical evidence from his attending physician with a firm diagnosis and an opinion on causal relationship supported by medical rationale. He did not respond.

By decision dated July 2, 2010, OWCP denied appellant's claim for failure to establish the medical component of fact of injury.

On May 7, 2014 appellant requested an oral hearing. He submitted June 17 and October 20, 2011 right shoulder operative reports from Dr. Bill Snyder, an orthopedic surgeon.

By decision dated May 22, 2014, OWCP denied appellant's request for an oral hearing as untimely. It exercised its discretion and further denied the request because the relevant issue of the case could be addressed by requesting reconsideration and submitting evidence not previously considered by OWCP.

## **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides: "Before review under section 8128(a) of this title [relating 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 or her claim before a representative of the Secretary."<sup>2</sup>

Section 10.615 of Title 20 of the Code of Federal Regulations provide that a hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record.<sup>3</sup> The hearing request

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<sup>2</sup> *Id.* at § 8124(b)(1).

<sup>3</sup> 20 C.F.R. § 10.615.

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, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.<sup>6</sup>

### ANALYSIS

The Board finds that OWCP properly determined that appellant's May 7, 2014 request for a hearing was not timely filed. Appellant's request was made more than 30 days after the issuance of the July 2, 2010 decision. Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.<sup>7</sup> For this reason, OWCP properly denied his hearing as a matter of right.

OWCP proceeded to exercise its discretion in accordance with Board precedent to determine whether to grant a hearing in this case. It denied appellant's request on the grounds that he could equally well address any issues in his case by submitting evidence not previously considered by OWCP and requesting reconsideration. Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP's July 2, 2010 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for an oral hearing.<sup>8</sup>

On appeal, appellant argued the merits of his case. The Board only has jurisdiction over the May 22, 2014 nonmerit decision which denied his request for an oral hearing. As noted, the Board does not have jurisdiction over the merits of the claim.

### CONCLUSION

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

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<sup>4</sup> *Id.* at § 10.616.

<sup>5</sup> *See G.W.*, Docket No. 10-782 (issued April 23, 2010). *See also Herbert C. Holley*, 33 ECAB 140 (1981).

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

<sup>7</sup> *See William F. Osborne*, 46 ECAB 198 (1994).

<sup>8</sup> *See Gerard F. Workinger*, 56 ECAB 259 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 22, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2014  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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