

his claim for displaced left trimalleolar fracture and nondisplaced right lateral malleolus fracture. It paid appropriate disability compensation and medical benefits.

On April 15, 2011 appellant returned to full-time limited duty. On September 23, 2011 he returned to full duty.

On August 19, 2013 appellant filed a claim for a schedule award. In an August 1, 2013 report, Dr. John W. Ellis, a Board-certified family practitioner, reviewed appellant's history and noted his current complaints of decreased range of motion and weakness of his ankles. Upon examination, he observed hypertrophy over the medial and lateral aspects of the right ankle and decreased range of motion. Examination of the left ankle also demonstrated hypertrophy over the medial, later, and anterior parts and decreased range of motion. Dr. Ellis diagnosed right ankle fractured lateral malleolus and arthritis, left ankle trimalleolar fracture and arthritis, left ankle strain, and left shoulder strain. He noted that appellant reached maximum medical improvement. Dr. Ellis opined that according to Table 16-2, page 401 & 503, of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) appellant had 19 percent impairment each of the right and left lower extremities.

OWCP referred appellant, along with a statement of accepted facts and the medical record, to Dr. Kala Danushkodi, Board-certified in physical medicine and rehabilitation, for a second opinion examination to determine the rate of permanent impairment, if any, of appellant's bilateral ankle conditions. In a September 19, 2013 report, Dr. Danushkodi reviewed appellant's history, including the statement of accepted facts and the conducted an examination. He observed moderate tenderness and pain with range of motion in the left ankle. Examination of the right ankle revealed mildly tender anteriorly at sinus tarsi and normal range of motion and strength. Dr. Danushkodi concluded that according to Table 16-2 of the sixth edition of the A.M.A., *Guides* appellant had 13 percent impairment of the lower left extremity and 7 percent impairment of the right lower extremity.

In an October 4, 2013 report, an OWCP medical adviser reviewed Dr. Danushkodi's September 19, 2013 report and opined that appellant had 13 percent impairment of the left lower extremity and 6 percent impairment of the right lower extremity. He explained that Dr. Danushkodi incorrectly used the diagnostic-based study in conjunction with the net adjustment formula when calculating impairment for the right lower extremity. The medical adviser provided his calculations and findings regarding appellant's permanent impairment. He noted a date of maximum medical improvement as September 19, 2013.

On October 10, 2013 OWCP granted appellant a schedule award for 6 percent impairment of the right leg and 13 percent impairment of the left leg based on the October 4, 2013 report of OWCP medical adviser. The award ran from September 19, 2013 to October 7, 2010. OWCP noted a date of maximum medical improvement of September 19, 2013.

Following the October 10, 2013 schedule award decision, appellant submitted a completed CA-1032 form and resubmitted Dr. Ellis' August 1, 2013 report.

In an appeal request form dated August 19, 2014 and received by the Branch of Hearings and Review on September 17, 2014, appellant requested an oral hearing.

By decision dated December 17, 2014, an OWCP hearing representative denied appellant's request for a hearing as untimely filed. He noted that appellant's request for an oral hearing was received by OWCP on September 17, 2014, which was more than 30 days after the October 10, 2013 decision. OWCP exercised its discretion and further determined that the issue in the case could be equally well addressed by requesting reconsideration from it and submitting evidence not previously considered which establishes his claim.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary 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.² Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.³ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.⁴ Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.⁵ OWCP procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).⁶

ANALYSIS

On October 10, 2013 OWCP denied appellant's schedule award claim. Appellant requested an oral hearing that was received by the Branch of Hearings and Review on September 17, 2014. The Board notes that appellant's request for an oral hearing was submitted more than 30 days after the October 10, 2013 decision.⁷ Section 8124(b)(1) is unequivocal on

² *Id.* at § 8124(b)(1).

³ 20 C.F.R. §§ 10.616, 10.617.

⁴ *Id.* at § 10.616(a).

⁵ *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁶ *See R.T.*, Docket No. 08-408 (issued December 16, 2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.2(a) (October 2011).

⁷ The 30-day period for determining the timeliness of an employee's request for an oral hearing or review commences the day after the issuance of OWCP's decision. *See Donna A. Christley*, 41 ECAB 90 (1989). The Board notes that appellant did not submit a written request for an oral hearing by November 9, 2013, within 30 calendar days after OWCP's October 10, 2013 decision.

the time limitation for requesting a hearing.⁸ The Board finds that OWCP properly determined that appellant's request for an oral hearing was not timely and, thus, he was not entitled to a hearing as a matter of statutory right under section 8124(b)(1) of FECA.

Although appellant's request for a hearing was untimely, OWCP has the discretionary authority to grant the request and it must exercise such discretion. In its December 17, 2014 decision, it properly exercised its discretion by notifying appellant that it had considered the matter in relation to the issue involved and that additional argument and evidence could be submitted with a request for reconsideration. The Board has held that the only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.⁹ In this case, there is no evidence of record that OWCP abused its discretion by denying appellant's hearing request. Accordingly, the Board finds that OWCP properly denied appellant's request for an oral hearing.

On appeal appellant argues the merits of his schedule award claim. The Board does not have jurisdiction to review the October 10, 2013 schedule award decision.¹⁰ The only decision presented in this appeal before the Board is the December 17, 2014 decision which denied appellant's request for an oral hearing as untimely filed.

CONCLUSION

The Board also finds that OWCP properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1).

⁸ *William F. Osborne*, 46 ECAB 198 (1994).

⁹ *Samuel R. Johnson*, 51 ECAB 612 (2000).

¹⁰ *Supra* note 1.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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