

FACTUAL HISTORY

On August 23, 1994 appellant, then a 33-year-old firefighter, filed a traumatic injury claim (Form CA-1) alleging that he injured his left knee in the performance of duty. OWCP accepted the claim for derangement of medial meniscus, left knee and paid benefits, including a left knee arthroscopy of October 1994 and a left total knee replacement. Appellant was placed on the periodic rolls to receive wage-loss benefits.³

On May 15, 2014 OWCP informed appellant that federal regulations required him to make an affidavit relative to any earnings or employment during the previous year and that a Form CA-1032 was enclosed for that purpose. It notified him that he had to fully answer all questions on the Form CA-1032 and return the statement within 30 days or his benefits would be suspended. The letter was sent to appellant's last known address.

On June 13, 2014 OWCP received a partially completed Form CA-1032 from appellant dated June 2, 2014.⁴ On June 25, 2014 it notified him of the deficiencies in his form and afforded him 10 days from the date of the letter to make the corrections and return the form to OWCP. OWCP further notified appellant that any failure on his part to comply would result in suspension of his benefits pursuant to 20 C.F.R. § 10.528. Appellant did not respond.

By decision dated January 21, 2015, OWCP suspended appellant's compensation benefits, effective February 8, 2015, for failing to submit the Form CA-1032 as requested. It noted that if he completed and returned an enclosed copy of the Form CA-1032 his compensation benefits would be restored retroactively to the date they were suspended.

On May 19, 2015 OWCP received appellant's May 13, 2015 request for a telephonic hearing before an OWCP hearing representative. The request was postmarked May 13, 2015.

By decision dated June 11, 2015, OWCP denied appellant's request for an oral hearing without a merit review as it was untimely. It considered his request within its discretion, but found that his case could be addressed equally well by a request for reconsideration and the submission of evidence showing that he completed and submitted the Form CA-1032 as requested by OWCP.

³ By decision dated November 18, 1996, OWCP issued appellant a schedule award for 16 percent permanent impairment of the left leg. By decision dated March 12, 1998, it issued an award for an additional 10 percent permanent impairment of the left leg. On December 5, 2003 the Board affirmed OWCP's November 18, 2002 decision which found that the position of deli clerk represented appellant's wage-earning capacity. By decision dated April 10, 2007, OWCP found appellant had a total 38 percent left lower extremity permanent impairment. Appellant filed a claim for recurrence of total disability on February 22, 2008. This recurrence claim was accepted on September 29, 2008 and appellant again received temporary total disability benefits as of September 29, 2008 on the periodic rolls. By decision dated March 30, 2015, OWCP reduced appellant's wage-earning capacity on the basis that he had the capacity to earn wages as a van driver. Appellant has not appealed the March 30, 2015 decision to the Board.

⁴ Appellant failed to answer whether he had worked for any employer during the past 18 months; whether he was self-employed or involved in any business enterprise in the past 15 months; and had only partially completed the questions under Part D -- Other Federal Benefits or Payments.

LEGAL PRECEDENT -- ISSUE 1

FECA authorizes the Secretary of Labor to require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.⁵

Under section 10.528 of OWCP's implementing federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work which the employee has performed for the prior 15 months.⁶ If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.⁷

ANALYSIS -- ISSUE 1

On October 7, 2014 OWCP provided appellant with a Form CA-1032. It notified him that federal regulations required him to complete the form and answer all questions concerning his employment or earnings. OWCP properly notified him that if he did not completely answer all questions and return the statement within 30 days, his benefits would be suspended. The record reflects that OWCP's letter was properly sent to appellant's last known address.⁸ The record does not establish that he responded prior to the January 21, 2015 OWCP decision suspending his benefits. Based on the evidence of record, the Board finds that OWCP properly suspended appellant's compensation benefits effective February 8, 2015 pursuant to 20 C.F.R. § 10.528.⁹

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b) of FECA provides that a claimant 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 claim before a representative of the Secretary.¹⁰ Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.¹¹ The request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the

⁵ 5 U.S.C. § 8106(b).

⁶ 20 C.F.R. § 10.528.

⁷ *Id.*; see also *id.* at § 10.525.

⁸ See *J.J.*, Docket No. 13-1067 (issued September 20, 2013).

⁹ *J.J.*, Docket No. 09-1724 (issued March 1, 2010). See also *James A. Igo*, 49 ECAB 189 (1997).

¹⁰ 5 U.S.C. § 8124(b)(1).

¹¹ 20 C.F.R. § 10.615.

decision for which a hearing is sought.¹² A claimant is entitled to a hearing or review of the written record as a matter of right if the request is filed within 30 days.¹³

While a claimant may not be entitled to a hearing or review of the written record as a matter of right if the request is untimely, OWCP has the discretionary authority to grant the request and must properly exercise such discretion.¹⁴

ANALYSIS -- ISSUE 2

In a decision dated January 21, 2015, OWCP suspended appellant's compensation benefits as of February 8, 2015 as he had not fully completed the Form CA-1032. The record indicates that appeal rights accompanied the decision. Appellant requested an oral telephonic hearing in an appeal form postmarked May 13, 2015. By decision dated June 11, 2015, OWCP denied his request for an oral hearing as untimely under section 8124 of FECA.

The 30-day time period for determining the timeliness of appellant's request for oral hearing began on January 22, 2015 and ended 30 days later. As appellant's request for an oral hearing was postmarked May 13, 2015, he was not entitled to an oral hearing as a matter of right as his request was untimely.

OWCP has the discretionary power to grant a hearing or review of the written record when a claimant is not entitled to a hearing or review as a matter of right. It properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and denied appellant's request for an oral hearing because the case could be resolved by submitting additional evidence to OWCP with a reconsideration request. The Board has held that the only limitation on OWCP's discretionary authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.¹⁵ In this case, the evidence of record does not establish that OWCP committed any action in connection with its denial of appellant's request for an oral hearing which could be found to be an abuse of discretion. Consequently, OWCP properly denied his request for an oral hearing as untimely under section 8124 of FECA.

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits for failing to submit information on a Form CA-1032, as required. Furthermore, the Board finds that OWCP properly denied appellant's request for an oral hearing as untimely.

¹² *Id.* at § 10.616(a).

¹³ See *Leona B. Jacobs*, 55 ECAB 753 (2004).

¹⁴ 20 C.F.R. § 10.616(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

¹⁵ See *L.W.*, 59 ECAB 471 (2008).

ORDER

IT IS HEREBY ORDERED THAT the June 11 and January 21, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 8, 2015
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board