



## **FACTUAL HISTORY**

OWCP accepted that on June 30, 2012 appellant, then a 53-year-old mechanic, sustained a right knee sprain and a lateral meniscus tear of his right knee due to climbing into an armored fighting vehicle at work.

On July 8, 2013 appellant filed a claim for a schedule award due to his accepted work injuries.

In an October 29, 2014 decision, OWCP granted appellant a schedule award for two percent permanent impairment of his right leg. The award ran for 5.76 weeks from April 16 to May 26, 2014.

In a form dated November 28, 2014, appellant requested a review of the written record. A partial photocopy of the envelope in which the request was sent does not contain a legible postmark.

By decision dated January 15, 2015, OWCP denied appellant's request for a review of the written record under section 8124 of FECA. It stated that its decision was issued on October 29, 2014 and his request for a review of the written record was postmarked December 2, 2014.<sup>2</sup> OWCP noted that since appellant's request was not made within 30 days, he was not, as a matter of right, entitled to a review of the written record in his case. It, in its discretion, considered his request and determined that the issue in the case could equally well be addressed by requesting reconsideration and submitting evidence establishing entitlement to a greater amount of schedule award compensation.

## **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of FECA provides that "a claimant ... 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."<sup>3</sup> Section 10.615 of OWCP's federal regulations implementing this section of FECA, provides that a claimant shall be afforded the choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>4</sup> Thus, a claimant has a choice of requesting an oral hearing or a review of the written record pursuant to section 8124(b)(1) of FECA and its implementing regulations. OWCP's regulations and Board precedent provide that the request for an oral hearing or review of the written record must be sent within 30 days of the

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<sup>2</sup> Appellant's form requesting a review of the written record was marked as received by OWCP on December 9, 2014.

<sup>3</sup> 5 U.S.C. § 8124(b)(1).

<sup>4</sup> 20 C.F.R. § 10.615.

date of issuance of the decision (as determined by the postmark or other carrier's date marking) of the date of the decision for which an oral hearing or review of the written record is sought.<sup>5</sup>

### **ANALYSIS -- ISSUE 2**

Considering first the second issue of the present case, the Board finds that OWCP improperly denied appellant's request for a review of the written record under section 8124 of FECA.

In this case, appellant's form requesting a review of the written record from the October 29, 2014 decision was dated November 28, 2014 and was marked as received by OWCP on December 9, 2014. While the record contains a partial photocopy of the envelope in which the request was sent, the record does not contain a legible postmark. The Branch of Hearings and Review is required to retain an envelope in which a request for a hearing is made so as to determine the timeliness of the request for a hearing.<sup>6</sup> However, the case record submitted on appeal does not contain a legible copy of the envelope from which the timeliness of the hearing can be determined.

Because appellant submitted a request for a review of the written record which was dated November 28, 2014 and the record contains no envelope with a legible postmark, the Board finds that his request is timely filed within 30 days of OWCP's October 29, 2014 decision and he is entitled to a review of the written record as a matter of right.<sup>7</sup> Consequently, the case must be remanded for OWCP to provide appellant a review of the written record under section 8124.<sup>8</sup> After carrying out this development, OWCP should issue a merit decision on appellant's schedule award claim.<sup>9</sup>

### **CONCLUSION**

The Board finds that OWCP improperly denied appellant's request for a review of the written record under section 8124 of FECA.

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<sup>5</sup> *Id.* at § 10.616(a). A request for review of the written record is subject to the same requirement as an oral hearing request that the request be sent within 30 days of OWCP's final decision. See *Michael J. Welsh*, 40 ECAB 994 (1989).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.3 (October 2011). OWCP procedures further provide that the request is timely if it was mailed (as determined by the postmark or other carrier's date marking) within 30 days of the date of the district office's decision. If the postmark is not legible, the request will be deemed timely unless OWCP has kept evidence of date of delivery on the record reflecting that the request is untimely. *Id.* at Chapter 2.1601.4

<sup>7</sup> Appellant's November 28, 2014 request was made precisely 30 days after OWCP's October 29, 2014 decision.

<sup>8</sup> See *Solomon R. Lee*, Docket No. 03-487 (issued June 24, 2003); *Diane B. Werner*, Docket No. 01-274 (issued September 10, 2001). See also *L.W.*, Docket No.14-2055 (issued March 17, 2015).

<sup>9</sup> Given the Board's disposition of the nonmerit issue of this case, the Board will not consider the merit issue of the case.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 15, 2015 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: June 3, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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