



## **FACTUAL HISTORY**

On October 16, 2014 appellant, a 63-year-old lead sales and services associate, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right shoulder strain on September 15, 2014 when he hit his shoulder on a door jam between the vestibule and workroom floor.

By decision dated December 15, 2014, OWCP denied appellant's claim finding that he failed to establish fact of injury as the medical evidence failed to establish a diagnosis causally related to the employment incident.

In an appeal request form dated and postmarked March 27, 2015, and received by OWCP's Branch of Hearings and Review on March 31, 2015, appellant requested a telephonic oral hearing before an OWCP hearing representative.

By decision dated June 12, 2015, OWCP denied the request for an oral hearing, finding that appellant's request was untimely because it was not made within 30 days of its December 15, 2014 decision. OWCP exercised its discretion and determined that the relevant issue of the case could be addressed by requesting reconsideration and by offering 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] claim before a representative of the Secretary."<sup>2</sup>

Section 10.615 of Title 20 of the Code of Federal Regulations provide: "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 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>

---

<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> 20 C.F.R. § 10.615.

<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).

### **ANALYSIS**

Appellant had 30 calendar days from OWCP's December 15, 2014 decision, or until January 14, 2015, to request an oral hearing. He filed a request for an oral hearing postmarked March 27, 2015, which was more than 30 days after OWCP issued its December 15, 2014 decision. Section 8124(b)(1) sets an unequivocal time limitation for requesting a hearing.<sup>7</sup> Because the hearing request was not timely filed, appellant was not entitled to an oral hearing as a matter of right under section 8124(b)(1) of FECA.

OWCP retains discretion to grant an oral hearing, even if the request is untimely. In this case, it denied appellant's request because it determined that he could equally well address any issues in his case by requesting reconsideration.

On appeal appellant argues the merits of his case. The Board noted above that it only has jurisdiction over OWCP's June 12, 2015 nonmerit decision which denied his request for an oral hearing and therefore is precluded from conducting a merit review.

### **CONCLUSION**

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

---

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 12, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 29, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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