



## **FACTUAL HISTORY**

On September 7, 2007 appellant, then a 36-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her right knee while walking up steps to make a delivery. OWCP accepted appellant's claim for right knee sprain and strain on November 16, 2007 and for traumatic osteochondral defect on March 7, 2008.

On March 27, 2008 appellant underwent a right knee arthroscopy with synovectomy and medial shelf plica takedown and chondroplasty of the medial patellar facet. She was released to return to full duty on July 14, 2008.

Appellant filed a claim for recurrence of disability (Form CA-2a) received on September 19, 2008 alleging that her knee pain did not improve after her surgery and that she was partially disabled beginning August 11, 2008. She filed a claim for compensation (Form CA-7) on October 27, 2008 alleging that she used eight hours of leave without pay beginning on October 20, 2008. Appellant underwent a second right knee arthroscopy with chondroplasty of the patella, femoral groove, medial femoral condyle, and arthroscopic lateral release on October 20, 2008.

By decision dated December 30, 2008, OWCP denied appellant's September 19, 2008 claim for a recurrence of total disability. Appellant returned to light-duty work on January 26, 2009 and full duty on March 14, 2009. By decision dated April 1, 2009, OWCP's Branch of Hearings and Review hearing representative reversed the December 30, 2008 decision of OWCP. By decision dated April 17, 2009, OWCP accepted appellant's claim for a recurrence of disability.

On November 3, 2009 appellant filed a claim for a schedule award (Form CA-7). OWCP subsequently referred appellant for a second opinion and on June 11, 2012 Dr. Manhal A. Ghanma, a Board-certified orthopedic surgeon, found that she had reached maximum medical improvement and that she had two percent impairment of the right lower extremity.

By decision dated September 25, 2014, OWCP granted appellant a schedule award for seven percent impairment of her right lower extremity.

In a February 11, 2015 letter, received on February 20, 2015, appellant requested a review of the written record from a hearing representative of the Branch of Hearings and Review. This letter was postmarked February 14, 2015.

By decision dated March 31, 2015, the Branch of Hearings and Review denied appellant's request for a review of the written record, finding that her request was untimely as it was made more than 30 days after the most recent merit decision dated September 25, 2014. The Branch of Hearings and Review further found that the issue in the case could equally well be addressed through the reconsideration process with the submission of new evidence regarding her permanent impairment.

## LEGAL PRECEDENT

Section 8124(b) of FECA concerning a claimant's entitlement to a hearing before an OWCP representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his [or her] claim before a representative of the Secretary."<sup>3</sup> Section 10.615 of OWCP 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.<sup>4</sup> OWCP regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.<sup>5</sup>

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA,<sup>6</sup> has the power to hold hearings and reviews of the written record in certain circumstances where no legal provision was made for such reviews and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing or review of the written record.<sup>7</sup> OWCP procedures, which require it to exercise its discretion to grant or deny a hearing or review of the written record when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.<sup>8</sup>

## ANALYSIS

The Board finds that OWCP properly determined that appellant's February 11, 2015 request for a review of the written record, postmarked February 14, 2015, was untimely filed as it was mailed more than 30 days after the issuance of OWCP's September 25, 2014 merit decision. It, therefore, properly denied appellant's hearing as a matter of right.

OWCP then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a review of the written record in this case. It determined that a review of the written record was unnecessary as the issue could be resolved through the submission of evidence in the reconsideration process. Therefore, OWCP properly denied appellant's request for a review of the written record as untimely and properly exercised its discretion in denying appellant's request for a review of the written record as she had other review options available.

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<sup>3</sup> 5 U.S.C. § 8124(b)(1).

<sup>4</sup> 20 C.F.R. § 10.615.

<sup>5</sup> *Id.* at § 10.616(a).

<sup>6</sup> *Supra* note 1.

<sup>7</sup> *Marilyn F. Wilson*, 52 ECAB 347 (2001).

<sup>8</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

**CONCLUSION**

The Board finds the Branch of Hearings and Review properly denied appellant's request for a review of the written record.<sup>9</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 31, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2016  
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

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<sup>9</sup> Appellant filed a Form CA-2a on July 9, 2015 claiming a recurrence of disability on June 19, 2015 due to jamming her right knee in her work vehicle. On August 5, 2015 OWCP informed her that this was a possible intervening injury rather than a recurrence of her prior condition. By decision dated September 25, 2015, it denied appellant's claim for recurrence and provided her appeal rights. The Board does not have jurisdiction to review this claim in this appeal as OWCP's decision was issued after the date of appellant's appeal to the Board, July 28, 2015. Appellant should follow the appeal rights attached to the September 25, 2015 merit decision of OWCP if she disagrees with this decision.