



while casing mail on October 3, 2016. She stopped work on October 4, 2016.<sup>2</sup> On the reverse side of the claim form, appellant's immediate supervisor indicated that the claim should be converted to a claim for an occupational disease.

Appellant submitted an October 4, 2016 note from Susanne Wise, an attending physician assistant, who diagnosed right knee pain and torn right knee medial meniscus, and advised that appellant could not work until a follow-up appointment on an unspecified date.

In an October 13, 2016 development letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how the reported work incident(s) caused or aggravated a medical condition. It requested that appellant complete and return an attached questionnaire which posed various questions regarding the work incident(s) that she believed caused or aggravated her claimed condition.<sup>3</sup>

Appellant submitted an October 4, 2016 report from Dr. Brian Rosenberg, an attending Board-certified orthopedic surgeon, who noted her complaint of suffering from right knee pain due to an injury one day prior. Dr. Rosenberg diagnosed right knee pain and possible torn right knee meniscus. In an October 4, 2016 note, he advised that appellant could not work until a follow-up appointment on an unspecified date.<sup>4</sup> On November 3, 2016 Dr. Rosenberg found that appellant could return to work without restrictions.

The findings of a November 10, 2016 magnetic resonance imaging scan of appellant's right knee contained an impression of suspected tear of the mid-horn region of the medial meniscus with displaced fragments, chondromalacia of the medial femoral condyle, and slight peripheral extrusion of the medial meniscus with adjacent bursitis.

In a November 17, 2016 decision, OWCP denied appellant's claim for a work-related injury because she failed to establish the factual component of her claim. It found that appellant failed to submit evidence establishing that the implicated work event(s) occurred as alleged. OWCP indicated that appellant did not respond to its October 13, 2016 development letter and noted that it was unclear exactly how she was injured.

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<sup>2</sup> Appellant received continuation of pay beginning October 4, 2016. She returned to full-time regular duty on November 4, 2016.

<sup>3</sup> Appellant did not return a completed questionnaire to OWCP.

<sup>4</sup> An authorization for examination and/or treatment form (Form CA-16) was completed by an employing establishment official on October 14, 2016 and purported to authorize treatment by Dr. Rosenberg's office under specified conditions. Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).

On an appeal request form dated February 23, 2007 and postmarked February 24, 2017, appellant indicated that she was requesting an oral hearing and a review of the written record with OWCP's Branch of Hearings and Review.<sup>5</sup>

In a March 20, 2017 decision, an OWCP hearing representative denied appellant's request for a hearing. She found that appellant's request was untimely as it was not filed within 30 days of the issuance of OWCP's November 17, 2016 merit decision. Thus, the hearing representative was not entitled to a hearing as a matter of right. She exercised her discretion and determined that the issue of the case could equally well be addressed by requesting reconsideration and submitting additional evidence.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before a representative of OWCP's Branch of Hearings and Review, provides in pertinent part: "Before review under section 8128(a) of this title, 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 claim before a representative of the Secretary."<sup>6</sup> As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.<sup>7</sup> 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 date of issuance of the decision (as determined by the postmark or other carrier's date marking) for which an oral hearing or review of the written record is sought.<sup>8</sup>

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.<sup>9</sup> Specifically, the Board has held that OWCP has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to FECA which provided the right to a hearing,<sup>10</sup> when the request is made after the

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<sup>5</sup> The form was received by OWCP's Branch of Hearings and Review on March 1, 2017.

<sup>6</sup> 5 U.S.C. § 8124(b)(1). 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. 20 C.F.R. § 10.615.

<sup>7</sup> *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

<sup>8</sup> 20 C.F.R. § 10.616(a). A request for review of the written record is subject to the same requirement as an oral hearing request, *i.e.*, that the request be sent within 30 days of OWCP's final decision. *See J.P.*, Docket No. 15-0790 (issued June 3, 2015).

<sup>9</sup> *Henry Moreno*, 39 ECAB 475, 482 (1988).

<sup>10</sup> *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

30-day period for requesting a hearing,<sup>11</sup> and when the request is for a second hearing on the same issue.<sup>12</sup>

### **ANALYSIS**

Appellant's February 24, 2017 hearing request was made more than 30 days after the date of issuance of OWCP's prior decision dated November 17, 2016 and, thus, she was not entitled to a hearing as a matter of right. She requested a hearing before an OWCP representative on a form dated February 23, 2017 and postmarked February 24, 2017. As appellant's hearing request was not made within 30 days of OWCP's November 17, 2016 decision, OWCP's hearing representative properly determined that appellant was not entitled to a hearing as a matter of right.<sup>13</sup>

While OWCP also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, OWCP's hearing representative, in her March 20, 2017 decision, properly exercised her discretion by indicating that she had carefully considered appellant's request and had determined that the issue of the case could equally well be addressed by requesting reconsideration and submitting additional evidence in support of her claim for a work injury. The Board has held that as the only limitation on OWCP's authority is reasonableness, 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.<sup>14</sup> In the present case, the evidence of record does not indicate that OWCP committed any act in connection with its denial of appellant's hearing request which could be found to be an abuse of discretion.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for a hearing under section 8124 of FECA as it was untimely filed.

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<sup>11</sup> *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

<sup>12</sup> *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

<sup>13</sup> *See supra* notes 6 and 7.

<sup>14</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 20, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2018  
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