

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.H., Appellant** )  
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)  
**and** )  
)  
**DEPARTMENT OF THE ARMY,** )  
**SUSTAINMENT COMMAND,** )  
**Fort Richardson, AK, Employer** )  

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**Docket No. 17-1916**  
**Issued: January 9, 2019**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 11, 2017 appellant filed a timely appeal from May 31 and August 1, 2017 merit decisions and an August 8, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award;

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the August 8, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

(2) whether OWCP properly terminated appellant's wage-loss compensation, effective August 1, 2017; and (3) whether OWCP's Branch of Hearings and Review properly denied appellant's request for an oral hearing as untimely filed.

### **FACTUAL HISTORY**

On November 14, 2013 appellant, then a 41-year-old heavy mobile equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that, while in the performance of duty, he injured his back and neck on November 13, 2013 after he stopped for a traffic light and the driver behind him ran into his car. OWCP accepted the claim for cervical strain and displacement of cervical intervertebral disc without myelopathy. It also authorized a cervical surgery, which appellant underwent on January 27, 2014. Appellant returned to light-duty work on June 30, 2014. OWCP subsequently accepted an aggravation of lumbar sprain. However, based on a July 10, 2014 second opinion report from Dr. Thomas L. Gritzka, a Board-certified orthopedic surgeon, it denied authorization for a low back surgery.

In reports dated January 17 and February 14, 2017, Dr. Luke D. Liu, a Board-certified anesthesiologist and pain medicine specialist, opined that appellant continued to suffer from neck pain and lower back pain with progressive radiation into the bilateral thighs. He diagnosed: failed back syndrome, cervical; myofascial pain; chronic pain syndrome; insomnia due to other medical condition; essential hypertension; lumbar radiculopathy; intractable migraine without aura and without status migrainosus; degenerative lumbar disc disease; and long term use of drug.

On April 7, 2017 appellant filed a claim for a schedule award (Form CA-7).

In a duty status report (Form CA-17) dated April 11, 2017, Dr. Liu opined that appellant was not capable of resuming work due to his radiating low back pain and advised that he must not work in uncomfortable positions for extended periods of time. He also advised that appellant must also be able to "lift and manipulate 40 pounds. Dr. Liu also cannot be on a military installation whilst on heavy narcotics."

OWCP referred appellant to Dr. James Schwartz, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of his accepted employment-related conditions. In his April 8, 2017 report, Dr. Schwartz found that appellant had reached maximum medical improvement (MMI) and was capable of returning to light-duty work with the following work restrictions: twisting, bending/stooping, pushing, pulling, lifting, squatting, and kneeling for four (4) hours per day; no reaching above the shoulder; and pushing, pulling, and lifting up to 40 pounds.

In an April 14, 2017 development letter, OWCP advised appellant of the deficiencies of his schedule award claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

In an April 26, 2017 letter, OWCP advised appellant that it had found a conflict in the medical opinion evidence between his attending physician, Dr. Liu, and its second opinion physician, Dr. Schwartz, regarding his work capacity. It referred him to Dr. Lance Brigham, a Board-certified orthopedic surgeon, for a referee examination to resolve the conflict.

In response, appellant submitted an April 11, 2017 report from Dr. Liu who reiterated his diagnoses and opinions.

Appellant also submitted a duty status report (Form CA-17) dated May 9, 2017 from Dr. Liu who reiterated his opinion that appellant was not capable of resuming work.

In an April 27, 2017 report, Dr. Steven C. Humphreys, a Board-certified orthopedic surgeon, diagnosed cervicalgia, muscle spasm, headache, lumbar radiculopathy, lumbar degenerative disc disease, low back pain, and left shoulder pain. He noted that appellant was still experiencing neck pain and lower back pain.

X-rays of the lumbar spine dated March 20, 2017 revealed continued mild degenerative changes at L4-5 and L5-S1 and a satisfactory range of motion without instability.

A magnetic resonance imaging (MRI) scan of the cervical spine dated March 20, 2017 demonstrated stable appearance of the cervical spine, including moderate central canal narrowing at C5-6.

A lumbar spine MRI scan dated March 20, 2017 showed no significant interval change in the appearance-presentation of the lumbar spine and discs, including disc bulges at L3-4 through L5-S1 abutting against nerve roots from the interior levels, and impingement with no new progression of disc disease. The MRI scan also showed similar disc bulges at L3-4 through L5-S1 with radial fissure noted at L3-4 and L5-S1.

X-rays of the cervical spine dated March 20, 2017 revealed anterior interbody fusion at C5-6 and decreased range of motion without instability and a mild increase in scoliosis on the anterior view.

By decision dated May 31, 2017, OWCP denied appellant's schedule award claim finding the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body.

In his May 10, 2017 independent medical examination report, Dr. Brigham reviewed the medical evidence of record. He conducted a physical examination and found nonphysiologic, neurologic findings and self-limiting motion of the cervical spine. Dr. Brigham opined that appellant's subjective complaints were far beyond objective findings upon examination. He found that appellant's accepted conditions had resolved and no further treatment was recommended for any of his employment-related conditions. Dr. Brigham explained that the x-ray changes were progressive and consistent with the natural history of appellant's nonwork related, preexisting conditions. He noted that appellant's prognosis was good in view that he had stopped using all narcotics as of April 17, 2017, which he determined to be appellant's date of MMI. Dr. Brigham concluded that appellant was capable of returning to regular duty without restrictions.

In a duty status report (Form CA-17) dated June 2, 2017, Dr. Liu continued to opine that appellant was totally disabled from work.

By letter dated June 9, 2017, OWCP notified appellant that it proposed to terminate his wage-loss compensation and medical benefits because his accepted conditions had resolved, based

on Dr. Brigham's May 10, 2017 report. It afforded him 30 days to submit additional evidence or argument in disagreement with the proposed action.

Appellant subsequently submitted progress reports dated February 3, September 28 and 29, 2016, October 12 and 13, and November 8, 2016 and May 9, 2017 from Dr. Liu who reiterated his previous diagnoses, diagnosed back muscle spasm, sacroiliitis, and spondylosis of thoracic region without myelopathy or radiculopathy, and advised that appellant had undergone joint injections.

An x-ray of the lumbar spine dated November 2, 2015 showed a normal radiographic appearance of the lumbar spine.

A computerized tomography (CT) scan of the cervical spine dated November 2, 2015 showed no evidence for traumatic injury fracture or loss of alignment and changes of disc implant at C5-6 with posterior disc osteophyte complexes bilaterally, right worse than left.

A head CT scan dated November 4, 2015 revealed a normal CT appearance of the brain without contrast.

In a duty status report (Form CA-17) dated June 23, 2017, Dr. Liu indicated that appellant was advised to resume work on July 7, 2017 with a 20-pound lifting restriction.

On July 12, 2017 appellant submitted an appeal request form that accompanied OWCP's May 31, 2017 decision. The form was dated July 7, 2017 and requested an oral hearing by a representative of OWCP's Branch of Hearings and Review. The envelope was postmarked July 7, 2017. Appellant further submitted medical evidence in support of his claim.

Appellant later submitted a hospital report dated June 15, 1999 indicating that he had been involved in a motorcycle accident and a June 18, 1999 operative report for a resulting hand surgery.

An August 24, 2016 x-ray of the cervical spine demonstrated early degeneration at C3-4 and C4-5 and anterior fixation at C5-6.

A cervical spine MRI scan dated August 24, 2016 revealed a previous anterior fixation at C5-6 and early degenerative changes extending from C3 through C6.

An x-ray of the cervical spine dated November 9, 2016 showed limited range of motion, without abnormal subluxation, and unremarkable postoperative hardware at C5-6. An x-ray of the lumbar spine dated November 9, 2016 was an unremarkable examination and mild transitional lumbar anatomy was incidentally noted.

In a June 23, 2017 work capacity evaluation (Form OWCP-5c), Dr. Liu advised that appellant had a history of cervical and lumbar degenerative disc disease and spondylosis and advised that appellant was totally disabled from work until optimization of his pain was controlled with an intrathecal pump.

On July 6, 2017 Dr. Liu noted that appellant had been involved in a motor vehicle accident on November 13, 2013 while at work and had severe neck and lower back pain with pathology seen on imaging studies, as well as failed cervical back syndrome. He opined that appellant's

current pain condition stemmed from the injuries he sustained status post motor vehicle accident on November 13, 2013 and recommended an intrathecal pump implantation to provide significant and lasting pain relief, improved mobility, function, and quality of life.

By decision dated August 1, 2017, OWCP terminated appellant's wage-loss compensation, effective that day because he was no longer disabled from work as a result of his accepted employment injury. It found the weight of the evidence was represented by Dr. Brigham. OWCP noted that the claim remained open for medical benefits.

By decision dated August 8, 2017, a representative of OWCP's Branch of Hearings and Review denied appellant's request for an oral hearing as untimely filed. The decision noted that appellant's request was not made within 30 days of OWCP's May 31, 2017 decision. As such, appellant was not entitled to a hearing as a matter of right. The Branch of Hearings and Review considered a discretionary hearing, but declined to grant one, noting that appellant could instead file for reconsideration and submit new evidence establishing an employment-related injury.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim, including that he or she sustained an injury in the performance of duty as alleged, and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.<sup>3</sup>

The schedule award provisions of FECA<sup>4</sup> and its implementing regulations<sup>5</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>6</sup> The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.<sup>7</sup> It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting

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<sup>3</sup> See *A.M.*, Docket No. 13-0964 (issued November 25, 2013) (where the employee claimed entitlement to a schedule award for permanent impairment to the left lower extremity due to his employment-related lumbar condition, the Board found that the medical evidence did not establish a ratable impairment to the lower extremity resulting from his spinal condition and, therefore, denied his schedule award claim).

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.*

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

impairments of the body are to be included.<sup>8</sup> A schedule award is not payable under section 8107 of FECA for an impairment of the whole person.<sup>9</sup>

A schedule award is not payable for a member, function, or organ of the body not specified in FECA or in the implementing regulations.<sup>10</sup> As neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or spine, no claimant is entitled to such an award.<sup>11</sup> However, as FECA makes provision for the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originates in the spine, if the medical evidence establishes impairment as a result of the employment injury.<sup>12</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

Appellant has submitted no medical evidence in conformance with the sixth edition of the A.M.A., *Guides*, or *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition*,<sup>13</sup> addressing whether he has permanent impairment of a scheduled member or function of the body. Thus, the Board finds that the medical evidence of record fails to establish that appellant has a permanent impairment to a scheduled member of the body causally related to his accepted conditions. Consequently, appellant has not established entitlement to a schedule award.

Appellant may request a schedule award or an increased schedule award at any time based on evidence of a new exposure or medical evidence showing a progression of an employment-related condition resulting in permanent impairment or increased impairment.

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<sup>8</sup> See *Raymond E. Gwynn*, 35 ECAB 247, 253 (1983); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(3) (January 2010). This portion of OWCP's procedures provides that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function.

<sup>9</sup> See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

<sup>10</sup> See *Tania R. Keka*, 55 ECAB 354 (2004).

<sup>11</sup> See *id.* FECA itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

<sup>12</sup> See *George E. Williams*, 44 ECAB 530 (1993). In 1966, amendments to FECA modified the schedule award provision to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member.

<sup>13</sup> *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009).

## LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>14</sup> After it has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>15</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>16</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>17</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>18</sup>

Section 8123(a) of FECA provides in pertinent part: if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>19</sup> Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.<sup>20</sup>

## ANALYSIS -- ISSUE 2

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation based on the May 10, 2017 report of Dr. Brigham, a referee physician.

In his May 10, 2017 report, Dr. Brigham found that appellant was not disabled due to his November 13, 2013 employment injury. He conducted a physical examination and found nonphysiologic neurologic findings and self-limiting motion of the cervical spine. Dr. Brigham opined that appellant's subjective complaints were far beyond his objective findings upon examination. He opined that appellant's accepted conditions had resolved and recommended no further treatment for any of the accepted conditions. Dr. Brigham explained that the x-ray changes were progressive and consistent with the natural history of appellant's nonwork-related, preexisting conditions. He noted that appellant's prognosis was good in view that he had stopped

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<sup>14</sup> See *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>15</sup> See *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>16</sup> See *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>17</sup> See *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>18</sup> See *James F. Weikel*, 54 ECAB 660 (2003).

<sup>19</sup> 5 U.S.C. § 8123(a). See *R.C.*, 58 ECAB 238 (2006); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

<sup>20</sup> See *V.G.*, 59 ECAB 635 (2008).

using all narcotics as of April 17, 2017, which he determined to be appellant's date of MMI. Dr. Brigham concluded that appellant was capable of returning to regular duty without restrictions.

The Board finds that Dr. Brigham's report represents the special weight of the medical evidence at the time OWCP terminated appellant's wage-loss compensation and OWCP properly relied on his report in terminating appellant's wage-loss compensation benefits. The Board finds that he had full knowledge of the relevant facts and evaluated the course of appellant's conditions. Dr. Brigham is a specialist in the appropriate field. His opinion is based on proper factual and medical history and his report contained a detailed summary of this history. Dr. Brigham addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's employment-related conditions.<sup>21</sup> At the time wage-loss compensation benefits were terminated, he found no basis on which to attribute residuals or continued disability due to appellant's accepted conditions. Dr. Brigham's opinion as set forth in his May 10, 2017 report is found to be probative evidence and reliable. The Board finds that Dr. Brigham's opinion constitutes the special weight of the medical evidence and is sufficient to justify OWCP's termination of wage-loss compensation as the accepted cervical and lumbar conditions had resolved and appellant was no longer disabled from work due to the accepted employment injury.

Appellant submitted a number of reports from Dr. Liu, which supported that he was totally disabled from work. However, as Dr. Liu was on one side of the conflict, his reports, without more by way of medical rationale, are insufficient to create a new conflict in medical opinion to overcome the special weight properly accorded to Dr. Brigham.<sup>22</sup> Thus, the Board finds that the reports of Dr. Liu are insufficient to overcome the special weight accorded to the opinion of Dr. Brigham.

The Board further finds that Dr. Humphreys failed to provide a well-rationalized explanation as to how and whether the diagnosed conditions, which have not been accepted by OWCP, are causally related to the November 13, 2013 employment injury.<sup>23</sup> Consequently, Dr. Humphreys' reports are of diminished probative value and are insufficient to overcome the special weight properly accorded to Dr. Brigham's report as the impartial medical examiner.<sup>24</sup>

Appellant further submitted x-rays, MRI scans, CT scans, and hospital and operative reports from 1999. The Board has held, however, that diagnostic studies lack probative value as

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<sup>21</sup> See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

<sup>22</sup> *Id.*

<sup>23</sup> See *T.M.*, Docket No. 08-0975 (issued February 6, 2009) (for conditions not accepted or approved by OWCP as being due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence).

<sup>24</sup> See *J.M.*, Docket No. 11-1257 (issued January 18, 2012); *Dorothy Sidwell*, 41 ECAB 857 (1990).



they do not address whether the employment incident caused any of the diagnosed conditions.<sup>25</sup> The Board, therefore, finds that this evidence is insufficient to overcome the special weight afforded the opinion of Dr. Brigham.

For the reasons set forth above, the Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation effective August 1, 2017.

### **LEGAL PRECEDENT -- ISSUE 3**

Section 8124(b)(1) of the 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>26</sup>

Section 10.615 of Title 20 of the Code of Federal Regulations provides, "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>27</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>28</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>29</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>30</sup>

### **ANALYSIS -- ISSUE 3**

Appellant requested an oral hearing utilizing the appeal request form that accompanied OWCP's May 31, 2017 merit decision. He had 30-calendar days from OWCP's May 31, 2017 decision, or until June 30, 2017, to request an oral hearing. Appellant filed a request for an oral hearing postmarked July 7, 2017, which was more than 30 days after OWCP issued its May 31, 2017 decision.<sup>31</sup> Section 8124(b)(1) is unequivocal on the time limitation for requesting a

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<sup>25</sup> See *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

<sup>26</sup> 5 U.S.C. § 8124(b)(1).

<sup>27</sup> 20 C.F.R. § 10.615.

<sup>28</sup> *Id.* at § 10.616.

<sup>29</sup> See *G.W.*, Docket No. 10-0782 (issued April 23, 2010).

<sup>30</sup> *Id.*

<sup>31</sup> Under OWCP regulations and procedures, the timeliness of a request for a hearing is determined on the basis of the postmark of the envelope containing the request. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011). 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.*

hearing.<sup>32</sup> For this reason, the Board finds that the request was untimely. Because the application was untimely filed, appellant was not entitled to an oral hearing as a matter of right.

Although appellant was not entitled to a hearing as a matter of right, OWCP's Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing following reconsideration.<sup>33</sup> In this instance, the hearing representative denied a discretionary hearing because appellant could instead submit new evidence and request reconsideration before OWCP. The Board finds that the hearing representative properly exercised her discretionary authority in denying appellant's request for an oral hearing.<sup>34</sup>

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award. The Board also finds that OWCP properly terminated appellant's wage-loss compensation, effective August 1, 2017. The Board further finds that OWCP's Branch of Hearings and Review properly denied appellant's request for an oral hearing as untimely filed.

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<sup>32</sup> See *William F. Osborne*, 46 ECAB 198 (1994).

<sup>33</sup> *D.E.*, 59 ECAB 438, 442-43 (2008); *J.C.*, 59 ECAB 206, 210-11 (2007).

<sup>34</sup> 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 deductions from known facts. See *André Thyrastron*, 54 ECAB 257, 261 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 8, August 1, and May 31, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 9, 2019  
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