

ISSUE

The issue is whether OWCP properly denied appellant's request for an oral hearing, pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On August 31, 2015 appellant, then a 51-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on February 11, 2015 he sustained a left elbow sprain/strain while in the performance of duty. He noted that the handle on a biohazardous equipment cooler that he was removing from his vehicle dislodged and caused him to twist his left elbow in a counterclockwise position. On October 13, 2015 OWCP accepted appellant's claim for left elbow sprain.³

By decisions dated October 4, 2016 and April 12, 2018, OWCP subsequently expanded the acceptance of appellant's claim to include unspecified sprain of left elbow, lesion of ulnar nerve, right and left upper limb, sprain of elbow and forearm, radial collateral ligament, and aggravation of preexisting spondylosis, cervical region.

By decision dated March 15, 2021, OWCP denied expansion of the acceptance of appellant's claim to include bilateral carpal tunnel syndrome (CTS).

On March 16, 2021 OWCP notified appellant of its proposed termination of his wage-loss compensation under 20 C.F.R. § 10.500(a) as he had not accepted an August 20, 2020 offered temporary light-duty assignment of transportation administrative assistant within his work restrictions. It afforded him 30 days to accept the assignment or provide reasons to justify his refusal.

On April 22, 2021 appellant requested reconsideration regarding the March 15, 2021 denial of expansion.

By decision dated April 26, 2021, OWCP terminated appellant's wage-loss compensation, effective that date, pursuant to 5 U.S.C. § 10.500(a). However, appellant remained eligible for medical benefits.

OWCP, by decision dated July 19, 2021, vacated the March 15, 2021 decision denying expansion, finding that the medical evidence of record was sufficient to establish that appellant sustained bilateral CTS causally related to his accepted employment injury. In a separate decision of even date, it formally accepted his claim for bilateral CTS.

On July 21, 2021 appellant requested reconsideration of the April 26, 2021 termination decision.

³ By decision dated August 12, 2016, OWCP denied appellant's request for authorization of left elbow revision ulnar nerve surgery.

In an August 11, 2021 decision, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), regarding the termination of his wage-loss compensation.

On February 22, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the April 26, 2021 decision.

By decision dated March 8, 2022, OWCP's Branch of Hearings and Review denied appellant's February 22, 2022 request for an oral hearing, noting that he had previously requested reconsideration. It explained that, under 5 U.S.C. § 8124(b)(1), he was not entitled to a hearing on the same issue as a matter of right. OWCP also exercised its discretion and considered whether to grant a discretionary hearing and found that the issue could be equally-well addressed by requesting reconsideration and submitting evidence not previously considered.

LEGAL PRECEDENT

A claimant dissatisfied with an OWCP decision shall be afforded an opportunity for either an oral hearing or a review of the written record.⁴ Section 8124(b) of FECA, concerning a claimant's entitlement to a hearing, states that: "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 issuance of the decision, to a hearing on his or her claim before a representative of the Secretary."⁵ OWCP's regulations further explain that the claimant must have not previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁶ Although a claimant who has previously sought reconsideration is not, as a matter of right, entitled to a hearing or review of the written record, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing following reconsideration.⁷

ANALYSIS

The Board finds that OWCP properly denied appellant's request for an oral hearing, pursuant to 5 U.S.C. § 8124(b).

In its August 11, 2021 decision, OWCP denied his request to reopen his case for further merit review under 5 U.S.C. § 8128(a). Subsequently, on February 22, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. As he had previously requested reconsideration of OWCP's April 26, 2021 merit decision under section 8128 of FECA, he was not entitled to an oral hearing as a matter of right under section 8124(b)(1).⁸

⁴ 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.615.

⁵ *Id.* at § 8124(b)(1).

⁶ *Id.*

⁷ *See H.T.*, Docket No. 20-1318 (issued April 27, 2021); *E.S.*, Docket No. 19-1144 (issued August 3, 2020); *J.C.*, Docket No. 19-1293 (issued December 16, 2019); *T.M.*, Docket No. 18-1418 (issued February 7, 2019); *M.W.*, Docket No. 16-1560 (issued May 8, 2017); *D.E.*, 59 ECAB 438 (2008); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

⁸ 20 C.F.R. § 10.616(a); *H.T., id.*; *J.H.*, Docket No. 17-1796 (issued February 6, 2018).

OWCP properly exercised its discretion and determined that the issue in the case could be equally-well addressed through a request for reconsideration and the submission of new evidence.⁹ Therefore, the Board finds that OWCP, in its March 8, 2022 decision, properly denied appellant's February 22, 2022 request for an oral hearing.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing, pursuant to 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the March 8, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2022
Washington, DC

Alec J. Koromilas, 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

⁹ *Id.*