

On October 15, 1998 appellant, then a 43-year-old mail handler, filed an occupational disease claim alleging that he developed back and neck pain as well as right leg numbness due to his federal job duties. He underwent surgery on October 1, 1998 and the Office accepted his

claim for herniated lumbar disc at L4-5 with stenosis. The Office later expanded appellant's claim to include herniated discs at L2-3 and L3-4 as well. He returned to full duty on January 8, 2001.

Appellant requested wage-loss compensation for total disability for the period April 21 to June 30, 2001. By decision dated June 13, 2001, the Office denied his claim for compensation from April 21 to June 30, 2001. Appellant requested a review of the written record on July 11, 2001. By decision dated December 20, 2001, the hearing representative affirmed the Office June 13, 2001 decision denying his claim for compensation.

Appellant requested reconsideration of the hearing representative's decision on January 21, 2002. By decision dated February 21, 2002, the Office declined to reopen his claim for consideration of the merits on the grounds that he failed to support his request for reconsideration with additional new evidence or argument.

Appellant requested reconsideration of the December 20, 2001 decision on October 28, 2002 and March 12, 2003. The record does not contain final decisions from the Office addressing these requests.<sup>1</sup>

Appellant underwent additional back surgery on February 25, 2003. The Office entered him on the periodic rolls and further expanded his claim to accept the additional conditions of aggravation of spinal stenosis, aggravation of degenerative disc disease and lumbar neuritis on February 19, 2004.

In a letter dated November 10, 2004, appellant requested that the Branch of Hearings and Review consider his claim for compensation from April 1 to July 9, 2001. On January 25, 2005 appellant again requested a decision from the Branch of Hearings and Review on this issue. By decision dated February 4, 2005, the Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that he had previously requested reconsideration of this issue and as the issue could be addressed through the reconsideration process.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of the Federal Employees' Compensation Act provides in pertinent part as follows:

"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 claim before a representative of the Secretary."<sup>2</sup>

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<sup>1</sup> As the Office has not issued final decisions considering appellant's requests for reconsideration on October 28, 2002 and March 12, 2003 and any accompanying evidence, the Board may not consider these issues and evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

<sup>2</sup> 5 U.S.C. §§ 8101-8193, § 8124(b)(1).

The claimant can choose between two formats: an oral hearing or a review of the written record.<sup>3</sup> The requirements are the same for either choice.<sup>4</sup> The Board has held that section 8124(b)(1) is “unequivocal” in setting forth the time limitation for requesting hearings or reviews of the written record. A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier’s date marking<sup>5</sup> and before the claimant has requested reconsideration.<sup>6</sup> However, when the request is not timely filed or when reconsideration has previously been requested, the Office may within its discretion, grant a hearing or review of the written record, and must exercise this discretion.<sup>7</sup>

### **ANALYSIS**

In this case, the Office issued a merit decision denying appellant’s claim for wage-loss compensation for the period April 21 to June 30, 2001 on June 13, 2001. Appellant requested and received a review of the written record on December 20, 2001 which affirmed the Office’s June 13, 2001 decision. He then requested reconsideration of the June 13 and December 20, 2001 merit decisions from the Office on January 21, 2002. The Office declined to reopen his claim for consideration of the merits by decision dated February 21, 2002. As appellant has previously requested reconsideration of the June 13 and December 20, 2001 merit decisions, the Board finds that he is not entitled to an oral hearing as a matter of right.

The Board further finds that the Branch of Hearings and Review properly exercised its discretion in determining that appellant’s claim could be pursued through the reconsideration process. As appellant was not entitled to an oral hearing as a matter of right and as the Branch of Hearings and Review properly exercised its discretion in denying his request for an oral hearing, the Board finds that appellant’s request for an oral hearing was properly denied.

### **CONCLUSION**

The Board finds that the Branch of Hearings and Review properly denied appellant’s request for an oral hearing as appellant had previously requested reconsideration on the issue of his entitlement to wage-loss compensation from April 21 to June 30, 2001 and as the Branch of Hearings and Review properly exercised its discretion in denying the request.

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<sup>3</sup> 20 C.F.R. § 10.615.

<sup>4</sup> *Claudio Vazquez*, 52 ECAB 496, 499 (2001).

<sup>5</sup> 20 C.F.R. § 10.616(a); *Tammy J. Kenow*, 44 ECAB 619 (1993).

<sup>6</sup> *Martha A. McConnell*, 50 ECAB 129, 130 (1998).

<sup>7</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 4, 2005 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: September 20, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board