United States Department of Labor
Employees' Compensation Appeals Board

B.L, Appellant	)	
and	)	**Docket No. 09-1088**
	)	**Issued: November 16, 2009**
U.S. POSTAL SERVICE, POST OFFICE, San Antonio, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 16, 2009 appellant filed a timely appeal from a February 9, 2009 nonmerit decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review denying her request for a review of the written record.[1]

ISSUE

The issue is whether the Office properly denied appellant's request for a review of the written record as untimely.

FACTUAL HISTORY

On January 24, 2007 appellant, a 52-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained shoulder injuries as a result of employment

[1] The only decision before the Board on this appeal is the Office's February 9, 2009 nonmerit decision. The Board lacks jurisdiction to review the Office's most recent merit decision dated February 22, 2008, because more than one year elapsed between its issuance and the date appellant filed her appeal. *See* 20 C.F.R. § 501.3(d)(2).

activities. On September 12, 2007 the Office accepted her claim for right shoulder impingement syndrome and right sprain of the shoulder and upper arm. Appellant was placed on the periodic rolls and received appropriate compensation benefits. On September 12, 2007 she returned to full-time work as a modified carrier.

In a decision dated February 22, 2008, the Office terminated appellant's compensation payments, under the provisions of 5 U.S.C. §§ 8106 and 8115, on the grounds that her actual earnings met or exceeded the current wages of the job held when injured. It found that the modified carrier position was suitable and fairly and reasonably represented her wage-earning capacity, as she had demonstrated the ability to perform the duties of this job for two months or more. The Office attached to the decision a copy of appellant's appeal rights, which included the right to request an oral hearing or review of the written record within 30 days; the right to request reconsideration within one year of the date of the decision; and the right to request review by the Board.

On January 29, 2009 appellant requested a review of the written record and submitted supporting documentation. She stated that her delay in filing the request was due to her confusion regarding the time limitation on her right to file, as well as her depression due to inability to sleep.

By decision dated February 9, 2009, the Office hearing representative denied appellant's request for review of the written record on the grounds that it was untimely filed. The hearing representative stated that, after carefully considering appellant's request, he had determined that the issue in this case could equally well be addressed by requesting reconsideration from the district office and submitting evidence not previously considered which establishes that the position of a modified carrier did not reasonably represent her wage-earning capacity.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act provides 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 the issuance of the decision, to a hearing on his claim before a representative of the Secretary.[2] Section 10.615 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.[3] The Office's 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.[4]

The Board has held that the Office, in its broad discretionary authority in the administration of the Act,[5] has the power to hold hearings in certain circumstances where no

[2] 5 U.S.C. § 8124(b)(1).

[3] 20 C.F.R. § 10.615.

[4] *Id*. at § 10.616(a).

[5] 5 U.S.C. §§ 8101-8193.

legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[6] The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of Board precedent.[7]

ANALYSIS

By decision dated February 22, 2008, the Office reduced appellant's compensation benefits to zero on the grounds that her actual earnings met or exceeded the current wages of the job held when injured. Appellant sent her request for a review of the written record to the Office by facsimile on January 29, 2009, which was more than 30 days after the issuance of its final decision. The Office properly found that appellant's request for a review of the written record was not timely filed under section 8124(b)(1) of the Act, and that she was not entitled to such review as a matter of right.

The Office then exercised its discretion and determined that the issue in the case could equally well be addressed in a request for reconsideration. As the only limitation on its 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 deductions from known facts.[8] The Board finds that there is no evidence of record that the Office abused its discretion in denying appellant's request. Thus, the Board finds that the Office's denial of appellant's request for review of the written record was proper under the law and the facts of this case.

On appeal appellant asserts that she misunderstood the February 22, 2008 letter and thought that she had a year to file her request. The Board notes that the Office's February 22, 2008 decision clearly informed appellant that she had 30 days in which to request a hearing or review of the written record.[9] For reasons stated herein, the Board finds appellant's contention to be without merit.

CONCLUSION

The Board finds that the Branch of Hearings and Review properly denied appellant's request for an oral hearing as untimely filed.

[6] *Marilyn F. Wilson*, 52 ECAB 347 (2001).

[7] *Teresa M. Valle*, 57 ECAB 542 (2006). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

[8] *Daniel J. Perea*, 42 ECAB 214 (1990).

[9] Appellant also indicated that, by the time she received the Office's decision, she had been limited by her physician to part-time work. As it concerns the merits of the Office's February 22, 2008 decision, the Board does not have jurisdiction to address this contention.

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board