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

| | | |
|---|---|---|
| **R.W., Appellant** | ) | |
| **and** | ) | |
| **U.S. POSTAL SERVICE, POST OFFICE, Raleigh, NC, Employer** | ) | **Docket No. 07-1711**<br>**Issued: December 13, 2007** |

*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
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On June 13, 2007 appellant filed a timely appeal from a March 19, 2007 decision of the Office of Workers' Compensation Programs denying his request for a review of the written record. The Board's jurisdiction to consider final decisions of the Office extends only to final decisions issued within one year prior to the filing of the appeal.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over an October 4, 2005 decision denying his claim for a schedule award.

### ***ISSUE***

The issue is whether the Office abused its discretion in denying appellant's request for a review of the written record.

[1] 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

## ***FACTUAL HISTORY***

This is the second appeal in this case.[2] By decision dated January 25, 2005, the Board remanded the case for further development of the medical evidence. The facts of this case, as set forth in the prior decision, are incorporated herein by reference.

On August 27, 1999 appellant, then a 32-year-old part-time flexible city carrier, filed a claim for a traumatic injury alleging that on August 10, 1999 he stepped on a plant root in a yard and twisted his left knee. The Office accepted his claim for a sprain of the left knee and leg and a closed fracture and chondromalacia of the left patella. On May 28, 2002 appellant filed a claim for a schedule award.

By decision dated May 11, 2004, the Office denied appellant's claim for a schedule award on the grounds that the evidence failed to establish that he had any permanent impairment of his left knee, based on correct application of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), causally related to his August 10, 1999 employment injury.

On May 23, 2006 following the Board's January 25, 2005 decision remanding the case, the Office asked Dr. Roy A. Majors to obtain x-rays of appellant's left knee and apply the findings to Table 17-31, page 655, of the fifth edition of the A.M.A., *Guides.*

On June 6, 2005 Dr. Majors indicated that appellant had a 25 percent impairment of his left knee based on the A.M.A., *Guides*. He declined to provide any additional information.

By decision dated October 4, 2005, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence did not establish that he had any impairment due to his accepted left knee conditions. It advised appellant that it would authorize him to be examined by another physician of his choice to obtain an impairment rating correctly based on the A.M.A., *Guides.* The Office advised that, if appellant disagreed with the denial of his schedule award claim, he could exercise his appeal rights.

By letter postmarked February 2, 2007, appellant requested a review of the written record.

By decision dated March 19, 2007, the Office denied appellant's request for a review of the written record on the grounds that it was not timely filed within 30 days of the October 4, 2005 decision. The Office exercised its discretion and determined that the issue in the case, whether appellant had any impairment causally related to his accepted left knee conditions, could be resolved equally well through a reconsideration request and the submission of additional evidence.

[2] *See* Docket No. 04-2024 (issued January 25, 2005).

## ***LEGAL PRECEDENT***

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing, or, in lieu thereof, a review of the written record.[3] A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which the hearing is sought.[4] A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which the hearing is sought.[5] The Office has discretion, however, to grant or deny a request that is made after this 30-day period.[6] In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.[7]

## ***ANALYSIS***

Appellant's request for a review of the written record was postmarked February 2, 2007, more than 30 days after the Office's October 4, 2005 decision. Therefore, he was not entitled to a review of the written record as a matter of right. The Office exercised its discretion and determined that, the issue in the case, whether he had any permanent impairment of his left knee causally related to his August 10, 1999 employment injury which entitled him to a schedule award, could be resolved through a request for reconsideration and the submission of additional evidence. The Board finds no evidence to indicate that the Office abused its discretion in denying appellant's untimely request for a review of the written record in its March 19, 2007 decision.

## ***CONCLUSION***

The Board finds that the Office did not abuse its discretion in denying appellant's request for a review of the written record.

[3] 5 U.S.C. § 8124(b) of the Federal Employees' Compensation Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary of Labor is entitled to a hearing on his claim, in a request made within 30 days after the date of issuance of the decision, before a representative of the Secretary of Labor. 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. *See Charles J. Prudencio*, 41 ECAB 499 (1990). *See also* 20 C.F.R. § 10.615 (a hearing includes two formats: an oral hearing or a review of the written record).

[4] 20 C.F.R. § 10.616(a).

[5] *James Smith*, 53 ECAB 188 (2001).

[6] 20 C.F.R. § 10.616(b).

[7] *James Smith, supra* note 5.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 19, 2007 is affirmed.

Issued: December 13, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board