

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

O.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Macon, GA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-1369
Issued: December 21, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 25, 2007 appellant filed a timely appeal of a February 22, 2007 decision of the Office of Workers' Compensation Programs which denied his request for a review of the written record. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the February 22, 2007 decision. Because more than one year elapsed between the last merit decision of the Office dated May 27, 2004 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

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

FACTUAL HISTORY

On June 17, 1997 appellant, then a 38-year-old mail processor, filed a traumatic injury claim alleging that, on June 8, 1997, he felt swelling and sharp pain in his right hand while pulling trays. On August 26, 1997 the Office accepted his claim for right extensor tenosynovitis and mild carpal tunnel syndrome. Appellant underwent a right wrist carpal tunnel release and

dorsal carpal ganglion excision on December 17, 1988. He was disabled from work from December 17, 1998 to January 21, 1999, when he returned to light duty with restrictions.¹

On August 12, 2003 appellant filed a Form CA-7 claim for compensation alleging a recurrence of disability on or after July 10, 2003.

In a report dated October 22, 2003, Dr. Jeffrey Fried, an orthopedic surgeon and a second opinion physician, opined that appellant was capable of performing limited duty with limitations on repetitive movements. In a January 12, 2004 supplemental report, he noted that appellant underwent a functional capacity evaluation (FCE) and provided restrictions for appellant's right hand. Dr. Fried opined that appellant was capable of performing his limited-duty position.

In a January 29, 2004 decision, the Office denied appellant's claim for compensation for the period on or after July 10, 2003.

By letter dated April 7, 2004, the Office advised appellant that he was offered a modified position as a mail processing clerk which was found to be suitable. Appellant refused the position and the Office advised appellant that his reasons for refusal were unacceptable.

By decision dated May 27, 2004, the Office terminated appellant's entitlement to wage-loss benefits effective May 26, 2004 because the evidence established that he refused to accept suitable work.

On April 5, 2004 appellant filed a CA-7 form for disability from July 10, 2003 to the present. On June 28 and October 3, 2005 he requested reconsideration. In a letter dated November 16, 2005, the Office advised appellant that his request for reconsideration was unclear. The Office advised him that it was unclear which decision he was requesting the Office to reconsider.

On December 15, 2005 appellant requested reconsideration of the Office's January 29, 2004 decision.

By decision dated January 25, 2006, the Office denied appellant's request for reconsideration. The Office found that his request for reconsideration was untimely as it was not made within a year of the January 29, 2004 decision. The Office further found that appellant had not presented clear evidence of error.

In a letter dated November 21, 2006, the Office advised appellant that he was not entitled to monetary compensation as he had refused to accept suitable employment. Appellant was also advised that the Office had received his request for authorization for a physical performance test; however, the requested treatment did not appear to be medically necessary.

On January 19, 2007 the Office's Branch of Hearings and Review received a letter from appellant requesting that it review the record and reinstate his benefits. He alleged that he accepted the modified job offer. Appellant requested that his benefits be reinstated.

¹ On February 25, 2002 appellant received a schedule award for an 11 percent permanent impairment of the right arm.

By decision dated February 22, 2007, the Office denied appellant's request for a review on the grounds that he had previously requested reconsideration and that the case could equally well be addressed through the reconsideration process.

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

Additionally, 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 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 the Act and Board precedent.⁷ Moreover, the Board has held that the Office has the discretion to grant or deny a hearing when the request is for a second hearing on the same issue.⁸

ANALYSIS

The Board finds that the Office properly denied appellant's request for a review of the written record. Section 8124(b) provides that, "before review under section 8128(a)," a claimant for compensation is entitled to a hearing on her claim on a request made within 30 days after the date of issuance of the decision.⁹ Office regulations provided that a claimant must not have

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.615.

⁴ 20 C.F.R. § 10.616(a).

⁵ 5 U.S.C. §§ 8101-8193.

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

⁷ *Teresa M. Valle*, 57 ECAB ____ (Docket No. 06-438, issued April 19, 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 See *Steven A. Anderson*, 53 ECAB 367, 369-70 (2002); *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

⁹ See 5 U.S.C. § 8124(b).

previously submitted a reconsideration request (whether or not it was granted) on the same decision.¹⁰

Appellant submitted a request for reconsideration on December 15, 2005. The Office denied his request for reconsideration in a January 25, 2006 decision. Appellant then requested a review of the written record on January 19, 2007. However, as he had previously requested reconsideration, he was not entitled to a review of the written record as a matter of right.¹¹ The Board finds that the Office also properly exercised its discretion in denying appellant's request for a review of the written record and determining that his case could be addressed equally well by requesting reconsideration and submitting evidence not previously considered

An abuse of discretion is generally shown through proof of manifest error or a clearly unreasonable exercise of judgment.¹² The Office properly advised appellant that he could seek reconsideration with additional evidence. It did not abuse its discretion in denying his request for an examination of the written record.

CONCLUSION

The Board finds that the Office properly denied appellant's request for an examination of the written record.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁰ 20 C.F.R. § 10.616(a) (2002).

¹¹ See *supra* note 4.

¹² See *Delmont L. Thompson*, 51 ECAB 155 (1999).