

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

M.R., Appellant

and

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Denver, CO,
Employer**

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**Docket No. 10-1609
Issued: February 24, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 1, 2010 appellant filed a timely appeal of a May 11, 2010 merit decision of the Office of Workers' Compensation Programs, denying her request for a review of the written record. Since more than one year elapsed between the last merit decision on November 30, 2006 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.¹

ISSUE

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

¹ For Office decisions prior to November 19, 2008, appellant had one year to file an appeal before the Board under 20 C.F.R. § 501.3(d)(2). A claimant has 180 days to timely file an appeal before the Board for decisions commencing November 19, 2008.

FACTUAL HISTORY

Appellant filed a traumatic injury claim (Form CA-1) on May 1, 2003, alleging that she injured her back on April 25, 2003 while working with letter trays. On August 4, 2003 the Office accepted the claim for lumbosacral sprain/strain, right forearm sprain/strain and right wrist sprain/strain. By decision dated November 30, 2006, it determined that appellant's actual earnings in a light-duty position fairly and reasonably represented her wage-earning capacity. The Office found that she had no loss of wage-earning capacity and her compensation for wage loss was reduced to zero pursuant to 5 U.S.C. § 8115.

In a letter dated and postmarked April 3, 2010, appellant requested a review of the written record with respect to the November 30, 2006 Office decision. She submitted an undated letter arguing that the wage-earning capacity determination was erroneous because the light-duty job was an odd-lot or make-shift position.

By decision dated May 11, 2010, the Office denied the request for a review of the written record on the grounds it was untimely filed. It considered the request and determined that the issue could equally well be addressed through the reconsideration process and the submission of new evidence.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "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 her claim before a representative of the Secretary."² According to 20 C.F.R. § 10.615, a claimant shall be afforded a choice of an oral hearing or a review of the written record.³ The regulations provide that a request for a hearing or review of the written record must be made within 30 days, as determined by the postmark or other carrier's date marking, of the date of the decision.⁴ A claimant is not entitled to a hearing or a review of the written record as a matter of right if the request is not made within 30 days of the date of the Office decision.⁵

ANALYSIS

In the present case, appellant's request for a review of the written record was postmarked April 3, 2010. Since this is more than 30 days after the November 30, 2006 Office decision, she is not entitled to a review of the written record as a matter of right.

Although appellant's request for a review of the written record was untimely, the Office has discretionary authority with respect to granting the request and it must exercise such

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.615.

⁴ *Id.* at § 10.616(a).

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

discretion.⁶ In this case it advised appellant that the issue could be addressed through the reconsideration process and the submission of new evidence. This is considered a proper exercise of the Office's discretionary authority.⁷ There is no evidence of an abuse of discretion in this case. The request for a review of the written record was untimely and the Office properly exercised its discretion in denying the request.

On appeal, appellant argues that the wage-earning capacity determination was in error, and her condition had materially changed. As noted, the Board does not have jurisdiction over the merits of the wage-earning capacity determination. The only issue before the Board is the denial of a request for a review of the written record. The Board finds that the Office properly denied the request for a review of the written record.

CONCLUSION

The Board finds that the Office properly denied appellant's April 3, 2010 request for a review of the written record.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 11, 2010 is affirmed.

Issued: February 24, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁶ See *Cora L. Falcon*, 43 ECAB 915 (1992).

⁷ *Id.*