

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

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**TRACEY D. JEFFERSON, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Detroit, MI, Employer**

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**Docket No. 03-2083  
Issued: December 5, 2003**

*Appearances:*  
*Tracey D. Jefferson, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member

**JURISDICTION**

On July 25, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated August 8, 2002, which denied her request for an oral hearing. She also appealed an April 11, 2002 Office decision which denied her claim for a recurrence of disability. Because more than one year has elapsed between the April 11, 2002 decision and the filing of this appeal on July 25, 2003 the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. § 501.2(c), 501.3(d)(2).

**ISSUE**

The issue is whether the Office denied appellant's request for an oral hearing.

**FACTUAL HISTORY**

On October 30, 2001 appellant, then a 36-year-old clerk, filed a traumatic injury claim alleging that on October 27, 2001 she injured her right hand due to keying parcels of mail. She did not stop work but was placed on limited duty by her physician. On November 26, 2001 the

Office accepted appellant's claim for tenosynovitis of the right wrist, right medial epicondylitis, and a right trapezium strain.

In a memorandum dated January 3, 2002, a human resources specialist for the employing establishment forwarded to the Office a January 2, 2002 disability certificate from a physician who indicated that appellant was disabled from work for two weeks due to tendinitis of both wrists. She stated that the employing establishment challenged this period of disability because the Office had accepted only tenosynovitis of the right wrist and the physician was not an authorized physician in appellant's case. The human resources specialist noted that appellant had been provided with an Office Form CA-2a (Notice of Recurrence) to complete.

On January 7, 2002 appellant submitted a signed and completed Form CA-2a, in which she indicated that she had a recurrence of disability on January 1, 2002. She indicated that her physical therapy for her employment injury had caused a worsening of her condition. Appellant claimed compensation for time lost from work for January 2 to 15, 2002. The Office denied her claim for a recurrence of disability by decision dated April 11, 2002.

By letter dated June 3, 2002 and postmarked June 8, 2002,<sup>1</sup> appellant asked that her case be "reopened." The letter did not have a heading indicating the intended recipient. However, the Office's Branch of Hearings and Review received the letter and advised appellant on July 17, 2002 that it would consider her request for an oral hearing.

By decision dated August 8, 2002, the Office's Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that the request was untimely and the issue could equally well be addressed through a request for reconsideration and the submission of evidence not previously considered that established that the claimed recurrence of disability was causally related to the October 27, 2001 employment injury.<sup>2</sup>

### **LEGAL PRECEDENT**

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that, before review under section 8128(a), a claimant not satisfied with a decision of the Secretary of Labor is entitled, on a request made within 30 days after the date of issuance of the decision, to a hearing on his claim.<sup>3</sup>

The Office's procedures implementing this section of the Act are found in the Code of Federal Regulations at 20 C.F.R. § § 10.615-10.618. 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

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<sup>1</sup> The record does not contain the envelope for appellant's letter but does have a photocopy of a June 8, 2002 postmark from the envelope.

<sup>2</sup> The record contains evidence submitted subsequent to the Office decision of August 12, 2002. However, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision; see 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting additional evidence to the Office along with a request for reconsideration.

<sup>3</sup> 5 U.S.C. § 8124(b)(1).

decision for which a hearing is sought.<sup>4</sup> 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 a hearing is sought as determined by the postmark of the request.<sup>5</sup>

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, 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.<sup>6</sup> Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act, which provided the right for a hearing,<sup>7</sup> when the request is made after the 30-day period for requesting a hearing<sup>8</sup> and, when the request is for a second hearing on the same issue.<sup>9</sup> In these instances, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.<sup>10</sup> 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."<sup>11</sup>

### ANALYSIS

The Office issued its merit decision on April 11, 2002. Attached to the decision was a notice of appeal rights advising appellant to read her appeal rights carefully and to clearly specify the procedure she wished to request. The attachment notified appellant that she had 30 days from the date of the Office's decision to request an oral hearing before an Office hearing representative.

By letter dated June 3, 2002 and postmarked June 8, 2002, more than 30 days following the Office's April 11, 2002 decision, appellant requested that her case be reopened. The letter was received by the Office's Branch of Hearings and Review, which properly found that the request for a hearing was untimely as it was not requested within 30 days of the Office's April 11, 2002 decision.<sup>12</sup>

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<sup>4</sup> 20 C.F.R. § 10.616.

<sup>5</sup> *Id.*

<sup>6</sup> *Johnny S. Henderson*, 34 ECAB 216 (1982).

<sup>7</sup> *Rudolf Bermann*, 26 ECAB 354 (1975).

<sup>8</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>9</sup> *Johnny S. Henderson*, *supra* note 6.

<sup>10</sup> *Claudio Vasquez*, 52 ECAB 496 (2002).

<sup>11</sup> *Id.*; *Herbert C. Holley*, *supra* note 8.

<sup>12</sup> *Charles J. Prudencio*, 41 ECAB 499 (1990).

The Office, in its discretion, considered appellant's hearing request in its August 8, 2002 decision and denied the request on the basis that appellant could equally well pursue her claim by requesting reconsideration and submitting additional evidence supporting that she sustained a recurrence of disability causally related to her October 27, 2001 employment injury.

As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken that are clearly contrary to the logic and probable deductions from established facts.<sup>13</sup> In its August 8, 2002 decision, the Office properly determined that appellant could equally well address the issue of a recurrence of disability through the reconsideration process by the submission of additional evidence not previously considered by the Office.<sup>14</sup> There is no evidence that the issue in the case could not be resolved as well through the reconsideration procedure as through the hearing procedure. Therefore, the Office did not abuse its discretion in refusing to grant appellant's hearing request.

On appeal appellant alleges that she never meant to file a claim for a recurrence of disability. She stated that she advised the employing establishment that she wished to change physicians and the employing establishment told her to submit a letter to the Office requesting authorization for a change in physician and a Form CA-2a. As noted above, the record contains a Form CA-2a signed and completed by appellant in which, she indicated that she sustained a recurrence of disability on January 1, 2002 and lost wages from January 2 to 15, 2002. The Office's procedure manual provides that "[an employee who requests action from the Office based on renewed disability for work or documented need for medical care should be asked to complete Form CA-2a, Notice of Employee's Recurrence....]"<sup>15</sup> The procedure manual further provides that "Generally, neither medical treatment nor compensation should be authorized unless the record contains Form CA-2a, with supporting information."<sup>16</sup> In her Form CA-2a, appellant claimed compensation for lost wages from January 2 to 15, 2002.<sup>17</sup> As she filed a claim for renewed disability for work, the employing establishment properly asked her to submit a completed Office Form CA-2a, notice of recurrence, as provided in the procedure manual.

### CONCLUSION

The Board finds that the Office properly denied appellant's request for a hearing.

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<sup>13</sup> *Claudio Vasquiz*, *supra* note 10; *Dorothy Bernard*, 37 ECAB 124 (1985).

<sup>14</sup> *See Marilyn D. Polk*, 44 ECAB 673 (1993).

<sup>15</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4b (May 1997).

<sup>16</sup> *Id.*, Chapter 2.1500.4e (January 1995).

<sup>17</sup> As noted above, appellant also submitted a January 2, 2002 disability certificate from a physician who indicated that she was disabled from work for two weeks due to tendinitis of both wrists.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 8, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2003  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member