

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

NORMAN R. CLARK, Appellant

and

**U.S. POSTAL SERVICE, FIRESTONE
STATION, Akron, OH, Employer**

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**Docket No. 04-1781
Issued: October 15, 2004**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 7, 2004 appellant filed a timely appeal of a June 17, 2004 decision, of the Office of Workers' Compensation Programs denying his request for a second hearing. As the last decision on the merits of appellant's case was issued on November 27, 2001 pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction to review the merits of appellant's case.¹

ISSUE

The issue is whether the Office properly denied appellant's request for a second hearing.

FACTUAL HISTORY

On October 20, 2000 appellant, then a 53-year-old letter carrier, filed a claim for compensation for an occupational disease, a strained back, that he attributed to being forced to work additional time on the street. Appellant stated that he first realized that he had a condition

¹ 20 C.F.R. §§ 501.2(c), 501.3.

and related it to his employment on June 17, 2000. This claim was denied by the Office in a March 23, 2001 decision, on the basis that appellant had not established that he sustained an injury as alleged.

By letter dated April 6, 2001, appellant's attorney requested a hearing before an Office hearing representative and such hearing was held on August 29, 2001. By decision dated November 27, 2001, an Office hearing representative found that the evidence did not establish that appellant sustained an injury in the performance of duty in June 2000.

In letters dated June 19, July 14 and September 23, 2003 and April 19, 2004, appellant's attorney inquired into the status of appellant's claim for a schedule award. These letters referred to the file number of the case presently on appeal before the Board (A9-2003841) and to at least one additional file number. In an April 28, 2004 letter, the Office advised appellant that the claim under file number 092003841 was denied on March 23, 2001, that the denial was affirmed on November 27, 2001 and that it "remains denied, without eligibility for schedule award."²

By letter dated May 1, 2004, appellant's attorney requested a hearing on the Office's April 28, 2004 "decision." By decision dated June 17, 2004, the Office found that, since appellant already received an oral hearing on the issue of whether he sustained a back injury on or around June 17, 2000, he was not entitled to another hearing as a matter of right. The Office exercised its discretion to deny the hearing request for the reason that the issue in the case could equally well be addressed by requesting reconsideration and submitting new evidence establishing that the claimed medical condition was related to his employment.

LEGAL PRECEDENT

The Office's regulations state that a "decision shall contain findings of fact and a statement of reasons" and "is accompanied by information about the claimant's appeal rights."³ Section 8124(b)(1) of the Federal Employees' Compensation Act,⁴ concerning a claimant's entitlement to a hearing before an Office hearing representative, states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section 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." The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.⁵ The Board has also held that a claimant is not entitled to a second hearing on the same issue.⁶

² The Office also advised appellant that the other file number 090420889, was the responsibility of another claims examiner.

³ 20 C.F.R. § 10.126.

⁴ 5 U.S.C. § 8124(b)(1).

⁵ *Tammy J. Kenow*, 44 ECAB 619 (1993); *Ella M. Garner*, 36 ECAB 238 (1984).

⁶ *Johnny S. Henderson*, 34 ECAB 216 (1982).

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. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request when the request is made after the 30-day period for requesting a hearing and when the request is for a second hearing on the same issue. In these instances the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁷

ANALYSIS

The Office's April 28, 2004 letter, from which appellant's attorney requested a hearing, was informational in nature⁸ and did not constitute a final adverse decision of the Office.⁹ It does not contain findings of fact or a statement of reasons and was not accompanied by information on appeal rights. This letter merely informed appellant that his claim had been denied and that there was no eligibility to a schedule award on a denied claim.

Appellant is not entitled to a hearing as a matter of right for two reasons: the request was not made within 30 days of the Office's most recent final decision, which issued on November 27, 2001 and the request is for a second hearing on the same issue. The Office considered granting appellant a discretionary hearing and properly exercised its discretion by finding that the issue could equally well be addressed by requesting reconsideration and submitting new medical evidence.¹⁰

CONCLUSION

The Office properly denied appellant's request for a second hearing.

⁷ *Claudio Vasquez*, 52 ECAB 496 (2001).

⁸ *See Robert P. Mitchell*, 52 ECAB 116, 117 n.3 (2000).

⁹ A hearing may be obtained only by a claimant who has received "a final adverse decision by the district [O]ffice." 20 C.F.R. § 10.616(a)

¹⁰ *Marilyn R. Wilson*, 52 ECAB 347 (2001).

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member