

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

JUNE E. HAYES-JOHNSON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Islandia, NY, Employer**

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**Docket No. 05-1746
Issued: December 19, 2005**

Appearances:
June E. Hayes-Johnson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 19, 2005 appellant filed a timely appeal from a May 13, 2005 decision of the Office of Workers' Compensation Programs which denied her request for a hearing before an Office hearing representative. Because more than one year has elapsed between the date of the appeal request and the last merit decision on the claim issued on July 13, 2004, the Board does not have jurisdiction over the merits of the claim under 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

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

FACTUAL HISTORY

On March 21, 2003 appellant, then a 39-year-old letter carrier, filed an occupational disease claim alleging that she injured her right elbow in the performance of duty. The Office accepted the claim for right elbow sprain on July 14, 2003.¹

Appellant subsequently filed a notice of recurrence alleging a recurrence of disability on May 25, 2003 causally related to the March 21, 2003 employment injury. She alleged carpal tunnel syndrome. Appellant stopped work on May 21, 2003 and returned on May 25, 2003.

By letter dated June 10 2004, the Office advised appellant that her claim was being adjudicated as a new injury claim.² The Office explained that this was done because a new employment factor caused her condition. The Office requested additional factual and medical evidence was needed. The Office explained that the physician's opinion was crucial to her claim and allotted appellant 30 days within which to submit the requested information.

By decision dated July 13, 2004, the Office denied appellant's claim on the grounds that she did not establish an injury as alleged. The Office found that the evidence did not support a work-related injury to her elbow on May 21, 2003.

On July 16, 2004 the Office received a letter from appellant dated July 9, 2004 and postmarked July 10, 2004. Appellant requested a five-day extension in order to submit medical information.

In separate facsimile transmissions dated July 16 and 18, 2004, appellant repeated her requests for an extension of five days and indicated the information was probably crossing in the mail.

On July 21, 2004 the Office received statements from appellant, several coworkers and appellant's husband addressing her claimed injury. The Office also received physical therapy treatment notes and a request for physical therapy.

On July 26, 2004 the Office received a copy of a previously submitted October 10, 2003 attending physician's report from Dr. Javier Chacon, a Board-certified internist, who diagnosed right medial lateral epicondylitis and checked the box "yes" in response to whether he believed appellant's condition was employment related.

In a facsimile transmission dated August 13, 2004, appellant requested an oral hearing.

By decision dated May 13, 2005, the Office found that appellant was not entitled to a hearing for the reason that her request was not made within 30 days of the issuance of the July 13, 2004 decision. The Office exercised its discretion and determined that it would not

¹ File No. 022037066. The original claim form was not in the record. However, the claim was accepted by the Office.

² Appellant's claim was subsequently treated as a traumatic injury claim and given file No. 022054249.

grant a hearing for the reason that the issue in the case could equally well be addressed by requesting reconsideration and submitting new evidence not previously considered which established that she sustained an injury as alleged. The Office also advised appellant of her appeal rights.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act,³ 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.⁴

The Office's regulations provide that a request received more than 30 days after the Office's decision is subject to the Office's discretion⁵ and the Board has held that the Office must exercise this discretion when a hearing request is untimely.⁶

ANALYSIS

The Office properly determined appellant's August 13, 2004 request for a hearing was not timely filed as it was made more than 30 days after the issuance of the Office's July 13, 2004 decision. This request was made 31 days after issuance of the July 13, 2004 Office decision. The Office properly denied appellant's hearing as a matter of right as it was not timely requested.

The Office then proceeded to exercise its discretion to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case was medical and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, the Office properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining whether to deny appellant's request for a hearing as she had other review options available.

³ 5 U.S.C. § 8124(b)(1).

⁴ *Tammy J. Kenow*, 44 ECAB 619 (1993); *Ella M. Garner*, 36 ECAB 238 (1984).

⁵ 20 C.F.R. § 10.616(b).

⁶ *Samuel R. Johnson*, 51 ECAB 612 (2000).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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