

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

LATANYA J. LANDERS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Houston, TX, Employer**

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**Docket No. 05-1473
Issued: November 28, 2005**

Appearances:
Latanya J. Landers, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On July 5, 2005 appellant filed a timely appeal from a May 27, 2005, nonmerit decision issued by an Office of Workers' Compensation Programs' hearing representative. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issue of denial of hearing in this case.

ISSUE

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

FACTUAL HISTORY

Appellant, a 39-year-old mail handler, filed a claim for benefits on December 15, 2001, alleging that she sustained injuries to her neck, back and right shoulders on December 14, 2001 causally related to factors of her employment. The Office accepted the claim for right shoulder, right rotator cuff, cervical and lumbar sprains. On December 8, 2004 appellant filed a

Form CA-2a claim for benefits, alleging that she sustained a recurrence of disability which was causally related to her accepted conditions.

By decision dated March 15, 2005, the Office denied appellant's claim for a recurrence of disability. The Office found that appellant failed to submit medical evidence sufficient to establish that the claimed recurrence of disability was caused or aggravated by the accepted condition.

On April 15, 2005 appellant requested an oral hearing.

By decision dated May 27, 2005, the Office denied appellant's request for an oral hearing. The Office stated that appellant's request was postmarked April 15, 2005, which was more than 30 days after the issuance of the Office's March 15, 2005 decision, and that she was therefore not entitled to a hearing as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant's request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process by submitting additional evidence.

LEGAL PRECEDENT

Section 8124(b)(1) of the Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office's final decision.¹ A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.² The Office has discretion, however, to grant or deny a request that is made after this 30-day period.³ In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁴

ANALYSIS

In the present case, because appellant's April 15, 2005 request for a hearing was postmarked more than 30 days after the Office's March 15, 2005 decision denying compensation for a claimed recurrence of disability, she is not entitled to a hearing as a matter of right. The Office considered whether to grant a discretionary hearing and correctly advised appellant that she could pursue her claim through the reconsideration process. As appellant may address the issue in this case by submitting to the Office new and relevant evidence with a request for reconsideration, the Board finds that the Office properly exercised its discretion in denying appellant's request for a hearing. The Board therefore affirms the Office's May 27, 2005 decision denying appellant an oral hearing by an Office hearing representative.

¹ 5 U.S.C § 8124(b)(1).

² 20 C.F.R. § 10.131(a)(b).

³ *William E. Seare*, 47 ECAB 663 (1996).

⁴ *Id.*

CONCLUSION

The Board finds that the Office properly denied appellant's request for an oral hearing before an Office hearing representative.

ORDER

IT IS HEREBY ORDERED THAT the May 27, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 28, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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