

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

GARY A. SCHNELL, Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Erie, PA, Employer**

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**Docket No. 05-1468
Issued: October 13, 2005**

Appearances:
Gary A. Schnell, pro se
Office of 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 of the March 29, 2005 nonmerit decision of the Office of Workers' Compensation Programs, which denied his request for an oral hearing. Because more than one year has elapsed between the last merit decision dated May 14, 2004 and the filing of this appeal, 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). Accordingly, the only decision properly before the Board is the March 29, 2005 decision.

ISSUE

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

FACTUAL HISTORY

Appellant, a 49-year-old former city carrier, has an accepted occupational disease claim for lumbar strain and lumbar degenerative disc disease, which arose on or about March 12, 1992. On March 20, 2001 appellant received a schedule award for six percent impairment of the right

lower extremity. In a November 8, 2001 decision, the Office found that appellant's wages as a modified distribution clerk fairly and reasonably represented his wage-earning capacity.¹ Because his then current wages equaled or exceeded the wages of the job he held when injured, the Office terminated wage-loss compensation.

On March 2, 2004 appellant filed a notice of recurrence. He alleged that he had a recurrence of disability on November 21, 2002 causally related to his March 12, 1992 accepted employment injury. Appellant lost consciousness on November 21, 2002 while seated at a table verifying mail.

In a decision dated May 14, 2004, the Office denied appellant's claim for recurrence of disability.

On December 17, 2004 appellant requested a review of the written record, which the Office received on January 11, 2005. The Branch of Hearings and Review denied appellant's request by decision dated March 29, 2005.

LEGAL PRECEDENT

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. 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 decision for which a hearing is sought.² If the request is not made within 30 days, a claimant is not entitled to a hearing or a review of the written record as a matter of right. However, the Office has discretion to grant or deny a request that was made after this 30-day period.³ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁴

ANALYSIS

Appellant did not request a review of the written record until December 17, 2004, which was approximately seven months after the Office issued its May 14, 2004 decision. Because appellant filed his request more than 30 days after the Office's May 14, 2004 decision, he is not entitled to a review of the written record as a matter of right.⁵ Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue could

¹ On April 23, 1998 appellant returned to work as a full-time, modified distribution clerk.

² 20 C.F.R. § 10.616(a) (1999).

³ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁴ *Rudolph Bermann*, 26 ECAB 354 (1975).

⁵ 20 C.F.R. § 10.616(a) (1999).

equally well be addressed by requesting reconsideration.⁶ Accordingly, the Office properly exercised its discretion in denying appellant's request for review of the written record.

CONCLUSION

The Board finds that the Branch of Hearings and Review properly denied appellant's request for review of the written record.

ORDER

IT IS HEREBY ORDERED THAT March 29, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 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

⁶ The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).