

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

APPLE GATE, Appellant

and

**U.S. POSTAL SERVICE, SAN FRANCISCO
BULK MAIL CENTER, Richmond, CA,
Employer**

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**Docket No. 05-1160
Issued: April 19, 2006**

Appearances:
Apple Gate, pro se
Paul J. Klingenberg, Esq., for the Director

Oral Argument February 16, 2006

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 13, 2005 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated October 12, 2004 which denied his request for an oral hearing. Because more than one year has elapsed between the last merit decision of January 4, 1999 and the filing of this appeal on January 13, 2005, the Board lacks jurisdiction to review the merits of appellant's claim, pursuant to 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.

FACTUAL HISTORY

On April 3, 1997 appellant, then a 40-year-old former mail handler, filed an occupational disease claim for an unspecified condition. The employing establishment controverted the claim, contending that, as appellant was terminated on January 23, 1988 and absent without leave many months prior to that, the claim was not timely filed.

By decision dated July 14, 1997, the Office denied appellant's claim as it was not timely filed. The Office noted that appellant's last exposure to the nondescribed employment factors was on or before January 28, 1988, that appellant admitted to being aware of the relationship between his condition and his employment by January 1993 and that appellant did not file the claim until April 3, 1997. Accordingly, the Office determined that appellant's claim was not timely filed. On July 22, 1997 appellant requested a hearing, and this hearing was held on December 16, 1998. By decision dated January 4, 1999, the hearing representative affirmed the Office's decision denying appellant's claim because it was not timely filed.

On May 26, 2004 appellant requested a second hearing. By decision dated October 12, 2004, the Office's Branch of Hearings and Review denied appellant's request for a hearing as he had a previous hearing on the issues of timeliness. The Branch of Hearings and Review further reviewed the request and determined that the issue of timeliness could be equally well addressed on reconsideration.

LEGAL PRECEDENT

A claimant for compensation not satisfied with a decision by the Office 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.¹ As section 8124(b)(1) is unequivocal in setting forth the time limitations for requesting a hearing, a claimant is not entitled to a hearing on his claim as a matter of right unless the request is made within the requisite 30 days.²

A request received after those dates will be subject to the Office's discretion.³ The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act, has the power to hold hearings in certain circumstances where no legal provision was made of such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁴ The Board has held that the Office has the discretion to grant or deny a hearing request on a claim⁵ when a request is made after the 30-day period for requesting a hearing,⁶ and when the request is for a second hearing on the same issue.⁷ In these instances, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁸

¹ 5 U.S.C. § 8124(b)(1).

² *Delmont L. Thompson*, 51 ECAB 155 (1999); *Charles J. Prudencio*, 41 ECAB 499 (1990).

³ 20 C.F.R. § 10.616(b).

⁴ *Johnny S. Henderson*, 34 ECAB 216 (1982).

⁵ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

⁶ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

⁷ *Johnny S. Henderson*, *supra* note 4.

⁸ *Id.*

ANALYSIS

In the instant case, the Office issued a decision denying appellant's claim as it was not timely filed on July 14, 1997. Appellant requested a hearing, and this hearing was held on December 16, 1998. The hearing representative affirmed the Office's decision that appellant's claim was untimely filed in a decision dated January 4, 1999. On May 26, 2004 appellant requested a second hearing. The Board finds that the Office properly determined that appellant was not entitled to a second hearing under section 8124 as a matter of right. The Board finds that the Office properly denied appellant's request for a second hearing as he already had a hearing before the Office.⁹

The Branch of Hearings and Review also exercised its discretion in further considering appellant's hearing request in its October 12, 2004 decision and denied it on the basis that appellant could pursue his claim by requesting reconsideration and submitting additional relevant and probative evidence. An abuse of discretion can be shown only through proof of manifest error, a manifestly unreasonable exercise of judgment, action of the kind that no conscientious person acting intelligently would reasonably have taken, prejudice, intentional wrong or action against logic.¹⁰ There is no evidence in the case record that the Office abused its discretion in refusing to grant appellant's request for a second hearing.

CONCLUSION

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

⁹ See *Hubert Jones, Jr.*, 57 ECAB ____ Docket No. 05-603 (issued March 10, 2006).

¹⁰ *Delmont L. Thompson*, *supra* note 2; *Daniel J. Perea*, 42 ECAB 214 (1990); *Charles J. Prudencio*, 41 ECAB 499 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 12, 2004 is affirmed.

Issued: April 19, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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