

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

---

**TERESA M. VALLE, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Palo Alto, CA, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 06-438  
Issued: April 19, 2006**

*Appearances:*  
*Teresa M. Valle, 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  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On December 19, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated June 14, 2005 which found a 20 percent impairment of the right leg and a 7 percent impairment of the left leg and an October 18, 2005 decision which denied her request for a hearing as untimely filed. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has more than a 20 percent impairment of the right leg and a 7 percent impairment of the left leg for which she received a schedule award; and (2) whether the Office properly denied her request for a hearing as untimely filed. On appeal, appellant contends that her hearing request was timely.

**FACTUAL HISTORY**

On December 6, 2001 appellant, then a 47-year-old carrier technician, sustained an employment-related left ankle sprain/strain, a right lower extremity superficial injury and a

meniscal tear to the right knee when she slipped and fell on a wet pavement while delivering mail. She returned to limited duty until she underwent surgical repair of the meniscal tear on May 24, 2002 and again returned to a limited-duty position on July 22, 2002. Appellant continued to receive medical care for her employment-related conditions.

Appellant filed a schedule award claim on December 3, 2004. The Office then referred her to Dr. John Randall Chu, Board-certified in orthopedic surgery, for an impairment evaluation. Based on his February 16, 2005 report and review by an Office medical adviser, by decision dated May 23, 2005, the Office granted appellant a schedule award for a total of 77.76 weeks of compensation, to run from May 31, 2003 to November 25, 2004. The schedule award, however, indicated that she was granted the award based on a 20 percent impairment to the right arm and a 7 percent impairment to the left arm. Appellant contacted the Office, noting that her impairment was to her lower extremities and in a June 14, 2005 letter, the Office stated:

“Attached is an amendment to the ‘award of compensation’ dated May 23, 2005. The notice indicated that the award was for impairment for the bilateral arms, however, the award was actually for impairment of the bilateral legs. Number one should have indicated as follows:

1. Degree & Nature of Permanent Disability: 20 percent impairment of the right leg, and 7 percent impairment of the left leg.”

On June 23, 2005 appellant requested a hearing. By decision dated October 18, 2005, the Office denied her hearing request on the grounds that it was untimely filed.

### **LEGAL PRECEDENT -- ISSUE 2**

A 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. If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.<sup>1</sup> The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees’ Compensation Act,<sup>2</sup> 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.<sup>3</sup> The Office’s procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.<sup>4</sup>

---

<sup>1</sup> *Claudio Vazquez*, 52 ECAB 496 (2001).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Marilyn F. Wilson*, 52 ECAB 347 (2001).

<sup>4</sup> *Claudio Vazquez*, *supra* note 1.

## **ANALYSIS -- ISSUE 2**

The Board finds that appellant timely requested a hearing. In its October 18, 2005 decision denying appellant's request for a hearing, the Branch of Hearings and Review stated that, as the schedule award was issued on May 23, 2005 and appellant's request was not postmarked until June 23, 2005, her request for a hearing was untimely. The Board, however, notes that on June 14, 2005 the Office issued an amended schedule award and it is from this decision that appellant requested a hearing. The Office's June 14, 2005 letter clearly constitutes a final decision with respect to appellant's schedule award, even though the letter did not contain appeal rights.<sup>5</sup> The June 14, 2005 letter amended the May 23, 2005 schedule award to correctly identify the impaired members.<sup>6</sup> The Board, therefore, finds the Office's June 14, 2005 letter was a final decision and thus, appellant's hearing request dated June 23, 2005 was timely.<sup>7</sup> As the Board finds the request for a hearing was timely filed, the case will be remanded to the Office to provide appellant the opportunity for a hearing.

## **CONCLUSION**

The Board finds that appellant's June 23, 2005 hearing request was timely filed. Therefore, the Office improperly denied her hearing request. In view of the Board's disposition of the second issue, it is premature to address the merits of whether appellant has established that she is entitled to schedule awards greater than the 20 percent for the right leg and 7 percent for the left previously awarded.

---

<sup>5</sup> See 20 C.F.R. § 10.126 (regarding the contents of an Office decision).

<sup>6</sup> See 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404.

<sup>7</sup> 20 C.F.R. § 10.616; see *Nelson R. Hubbard*, 54 ECAB 156 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 18 and June 14, 2005 be set aside and the case remanded to the Office for further proceedings in accordance with this opinion of the Board.

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