

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

S.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Washington, DC, Employer**

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**Docket No. 06-837
Issued: August 28, 2006**

Appearances:
S.C., *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 February 28, 2006 appellant filed a timely appeal of the January 27, 2006 decision of the Office of Workers' Compensation Programs denying her request for an oral hearing. Because more than one year has elapsed between the most recent merit decision dated December 3, 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) and 501.3(d)(2).

ISSUE

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

FACTUAL HISTORY

On October 27, 1999 appellant, then a 49-year-old mail carrier, filed a traumatic injury claim alleging that on that date she injured both of her arms while trying to break a fall. The Office accepted appellant's claim for carpal tunnel syndrome and carpal tunnel release surgery. Appropriate medical and compensation benefits were paid.

On January 9, 2004 appellant filed a claim for a schedule award. By decision dated October 14, 2004, the Office issued a schedule award for a 10 percent permanent loss of use of appellant's right upper extremity. In a decision dated December 3, 2004, the Office noted that she was previously granted a schedule award in a decision dated May 21, 2002 for a five percent permanent impairment to the left upper extremity. Therefore the Federal Employees' Compensation Act precluded appellant from being paid a second award for impairment to her left upper extremity.

On March 14, 2005 the Office received appellant's request for an oral hearing. Appellant's signature was dated February 26, 2005.

By decision dated January 27, 2006, the Office denied appellant's request for an oral hearing as it was untimely filed.

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 the 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 the issuance of the decision as determined by the postmark of the request. The Office has discretion, however, to grant or deny a request that is made after this 30-day period.² 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.³

ANALYSIS

In the instant case, the Office issued merit decisions with regard to appellant's claim for a schedule award on October 14 and December 3, 2004. On March 14, 2005 appellant requested an oral hearing. Her request was not timely filed as it was not filed within 30 days of the date of the decision. Accordingly, appellant was not entitled to a hearing as a matter of right. The Office also reviewed her request under its discretionary authority and also properly denied the hearing.

However, the Office delayed issuing a decision on appellant's request for an oral hearing until January 27, 2006, over 10 months after appellant's request was received. The Board only has jurisdiction over adverse final decisions of the Office issued within one year of the date of appellant's appeal.⁴ As appellant's request for a hearing was filed on March 14, 2005, well within the one year deadline for requesting appeal of the October 14 and December 3, 2004 decisions, the Office's delay prejudiced appellant's appeal rights. In *Tony J. Fosko*,⁵ the Board

¹ 5 U.S.C. § 8124(b)(1).

² *William E. Seare*, 47 ECAB 663 (1996).

³ *Id.*

⁴ 20 C.F.R. § 10.131(a)(b).

⁵ 35 ECAB 644 (1984).

found that, when the Office took 10 months to deny an application for reconsideration, it effectively used up the claimant's time to file an appeal to the Board. The Office cites *Fosko* in its procedure manual when it states that, when a reconsideration decision is delayed beyond 90 days, and the delay jeopardizes the claimant's right to review of the merits of the case by the Board, the Office should conduct a merit review to protect appellant's rights.⁶

A request for an oral hearing is one of the appeal methods available to appellant. In fact, appellant's request for an oral hearing was made by checking a box on the "Appeal Request Form" sent with the decision. Accordingly, the Office's delay in responding to appellant's request for an oral hearing seriously jeopardized appellant's appeal rights for the same reason the delay in issuing a decision on reconsideration jeopardized the claimant's appeal rights in *Fosko*. Therefore, this case must be remanded in order for the Office to issue a new merit decision to protect appellant's appeal rights.

Had the Office acted within 90 days, appellant would have been able to exercise her full appeal rights, including an appeal to the Board on the merits of this claim. As the Office's delay of over 90 days to issue a decision on appellant's request for an oral hearing is not consistent with the principles set forth in the Office's procedure manual and Board precedent, this case will be remanded to the Office for issuance of a decision on the merits of appellant's claim.

CONCLUSION

The Board finds that, due to the Office's delay in issuing its decision denying appellant's request for an oral hearing, appellant's appeal rights were jeopardized. Accordingly, the Office must issue a new decision on the merits.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.2(a) (January 2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 27, 2006 is vacated and the case is remanded for further consideration consistent with this opinion.

Issued: August 28, 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