

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

ERLENE P. TUCKER, Appellant)	
)	
and)	Docket No. 06-666
)	Issued: June 1, 2006
U.S. POSTAL SERVICE, POST OFFICE,)	
Atlanta, GA, Employer)	
)	

<i>Appearances:</i> Erlene P. Tucker, <i>pro se</i> Office of the Solicitor, for the Director	<i>Case Submitted on the Record</i>
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DECISION AND ORDER

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

JURISDICTION

On January 30, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated November 4, 2005, which denied her request for an oral hearing. Because more than one year has elapsed between the last merit decision dated March 25, 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(c)(2) and 501.3(d)(2).

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 49-year-old mail clerk, filed a Form CA-2 claim for benefits on January 10, 2004, alleging that she developed bilateral tendinitis and carpal tunnel conditions in her wrists causally related to factors of her employment. By letter dated February 10, 2004, the Office advised appellant that she needed to submit additional factual and medical evidence in support of

her claim. The Office stated that appellant had 30 days to submit the requested information. Appellant did not submit any additional evidence.

By decision dated March 25, 2004, the Office denied appellant's claim, finding that he failed to establish fact of injury.

On October 5, 2005 appellant requested an oral hearing.

By decision dated November 4, 2005, the Office denied appellant's request for an oral hearing. The Office found that appellant's request was postmarked October 5, 2005, which was more than 30 days after the issuance of the Office's March 25, 2004 decision and that he was not entitled to a hearing as a matter of right. The Office 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

Because appellant's October 5, 2005 request for a hearing was postmarked more than 30 days after the Office's March 25, 2004 decision denying her compensation claim, she was 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

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.*

will affirm the Office's November 4, 2005 decision denying appellant an oral hearing by an Office hearing representative.⁵

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 November 4, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 1, 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

⁵ On appeal, appellant has submitted new evidence. However, the Board cannot consider new evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 501(c).