



performing his work duties. The Office accepted his claim for a herniated disc at L4-5, degenerative disc disease at L4-S1 and depression.

On January 20, 1992 the Office referred appellant to a vocational rehabilitation counselor. He underwent back surgery on August 5, 1993 and vocational rehabilitation services were reopened on May 21, 1997. A vocational rehabilitation counselor identified the position of electronics assembler as being medically and vocationally suitable for appellant.

By decision dated January 29, 1999, the Office found that the selected position of electronics assembler with weekly earnings of \$240.00 represented appellant's wage-earning capacity. Accordingly, it reduced appellant's compensation effective January 29, 1999.<sup>1</sup>

On May 15, 2003 appellant filed a claim alleging that he sustained a recurrence of disability, noting that his condition had remained the same but had become progressively worse. He experienced pain in his lower back, both legs and both sides of his buttocks, headaches, depression and anger and weakness in both legs. In support of his claim, he submitted numerous medical records that addressed medical treatment he received on intermittent dates from January 3, 1990 to May 20, 2003, for his stated conditions including back surgery on May 29, 2002 and May 7, 2003.

By decision dated December 12, 2003, the Office found the medical evidence of record insufficient to establish that appellant sustained a recurrence of disability causally related to the September 2, 1982 employment injury. In a letter dated August 3, 2005 and postmarked August 4, 2005, appellant requested an oral hearing before an Office hearing representative.

In a decision issued on August 15, 2005, the Office's Branch of Hearings and Review denied appellant's request for an oral hearing as untimely. It exercised its discretion and denied his hearing request on the basis that the issue in the case could be resolved by requesting reconsideration and submitting additional medical evidence establishing that he sustained a recurrence of disability causally related to the September 2, 1982 employment injury.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that a claimant ... 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.<sup>2</sup> Section 10.615 of the Office's federal regulation implementing this section of the Act, provides that a claimant can choose between an oral hearing or a review of the written record.<sup>3</sup> The regulation also provides that in addition to the evidence of record, the employee may submit new evidence to the hearing representative.<sup>4</sup>

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<sup>1</sup> The Board notes that appellant did not return to work.

<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> 20 C.F.R. § 10.615.

<sup>4</sup> *Id.*

Section 10.616(a) of the federal regulations provides that a request for a review of the written record or an oral hearing must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision, for which a hearing is sought.<sup>5</sup> Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, the Office may within its discretionary powers grant or deny appellant's request and must exercise its discretion.<sup>6</sup>

### **ANALYSIS**

The Board finds that appellant's hearing request was made more than 30 days after the issuance of the Office's decision dated December 12, 2003 and, thus, he is not entitled to a hearing as a matter of right. He requested a hearing before an Office hearing representative in a letter dated August 3, 2005 and postmarked August 4, 2005, some 20 months after the Office's decision on his claim. The Office properly found that appellant was not entitled to a hearing as a matter of right because his August 3, 2005 hearing request was not made within 30 days of the Office's December 12, 2003 decision. Further, the Office properly exercised its discretion in further denying the oral hearing request in finding that the issue could equally well be addressed by appellant requesting reconsideration.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for a hearing, pursuant to 5 U.S.C. § 8124, as untimely filed.

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<sup>5</sup> 20 C.F.R. § 10.616(a).

<sup>6</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 15, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 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