

FACTUAL HISTORY

On March 24, 2005 appellant, then a 51-year-old civilian mariner, filed a traumatic injury claim alleging that on December 24, 2004 he sustained a right shoulder injury and rotator cuff tear when he was pushed and knocked into a group of shipmates by another shipmate.

In a June 30, 2005 letter, the Office requested additional factual information from appellant. Appellant did not respond.

By an August 10, 2005 decision, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the injury occurred in the performance of duty. The decision was sent to an address not of record.²

On August 17, 2006 appellant informed the Office that he did not receive the decision as it was sent to an incorrect address. The Office reissued the decision on August 17, 2006. On September 18, 2006 appellant submitted a request for an oral hearing.

By an October 17, 2006 decision, the Office denied appellant's request for an oral hearing on the grounds that appellant was not entitled to a hearing as a matter of right as the request was made 30 days after issuance of the final decision.

LEGAL PRECEDENT

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.³ 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.⁴ The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act,⁵ 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.⁶ 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.⁷

² Appellant listed his address in the CA-1 form as 30660 Milky Way Drive, Apt D26, Temecula, CA 92592. Both the development letter and the decision were sent to 2581 Ulric Street, San Diego, CA 92111. It is unclear from the record why this second address was used by the Office.

³ 20 C.F.R. § 10.616(a) (2004).

⁴ *Claudio Vazquez*, 52 ECAB 496 (2001).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁷ *Claudio Vazquez*, *supra* note 4.

ANALYSIS

The Board finds that appellant timely requested a hearing. In its October 17, 2006 decision, denying appellant's request for a hearing, the Office stated that, as the decision was issued August 10, 2005 and appellant's request was postmarked September 18, 2006,⁸ his request for a hearing was untimely as it was not made within 30 days. The Board, however, notes that on August 17, 2006, the Office reissued the decision, and it is from this decision that appellant requested a hearing.⁹

The 30-day period in which appellant could request a hearing as a matter of right commenced August 18, 2006.¹⁰ The 30th day fell on Saturday, September 16, 2006. In computing a time period the date of the event from which the designated period of time begins to run shall not be included while the last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday.¹¹ Appellant's request for a hearing was postmarked on Monday September 18, 2006 and, therefore, was filed on the last day of the extended 30-day period. Therefore, he was entitled to a hearing before an Office hearing representative as a matter of right. 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 September 18, 2006 hearing request was timely filed. Therefore, the Office improperly denied his hearing request. In view of the Board's disposition of the first issue, it is premature to address the merits of whether appellant had established that he sustained a traumatic injury in the performance of duty.

⁸ Under the Office's procedures, the timeliness of a request for a hearing is determined on the basis of the postmark of the envelope, which contains the letter requesting a hearing. See 20 C.F.R. § 10.616(a) (2004); Federal (FECA) Procedure Manual, Part 2 -- Claims, Hearings and Reviews of the Written Record, Chapter 2.1601.4(a) (December 1995).

⁹ The August 17, 2006 decision is considered reissued as the August 10, 2005 decision was not sent to appellant's last known address as required. See 20 C.F.R. § 10.127 (2004) ("A copy of the decision shall be mailed to the employee's last known address.")

¹⁰ See *Angel M. Lebron, Jr.*, 51 ECAB 488 (2000) (the date of the event from which the designated period of time begins to run shall not be included when computing the time period).

¹¹ See *Marguerite J. Dvorak*, 33 ECAB 1682 (1982). See also FECA Program Memorandum No. 250 (January 29, 1979).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 17, 2006 and August 10, 2005 be set aside and the case remanded to the Office for further proceedings in accordance with this opinion of the Board.

Issued: April 23, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board