

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

D.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Coppell, TX, Employer**

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**Docket No. 07-146
Issued: August 14, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 23, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated August 18, 2006, which denied his request for an oral hearing. Because more than one year has elapsed between the last merit decision dated June 17, 2005 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 before an Office hearing representative.

FACTUAL HISTORY

On March 13, 1997 appellant, a 42-year-old customer service supervisor, filed a Form CA-2 claim for benefits, alleging that he developed an emotional condition caused by factors of his employment. The Office accepted the claim for major depressive disorder.

By decision dated September 30, 2004, the Office reduced appellant's compensation to reflect his wage-earning capacity in the position of delivery person.

In a letter received by the Office on October 7, 2004, appellant requested an oral hearing. By decision dated May 26, 2005, an Office hearing representative reversed the September 30, 2004 decision and remanded for recalculation of appellant's compensation.

By decision dated June 17, 2005, the Office redetermined appellant's wage-earning capacity based on his actual earnings as a delivery person at the rate of \$286.54 per week.

In a letter received by the Office on August 3, 2006, appellant requested an oral hearing.¹

By decision dated August 18, 2006, the Office denied appellant's request for an oral hearing. The Office found that appellant's request was postmarked August 8, 2006, which was more than 30 days after the issuance of the June 17, 2005 decision, and that he was therefore 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 Federal Employees' Compensation 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 final decision.² 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.³ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁴ 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.⁵

ANALYSIS

In the present case, appellant's August 3, 2006 request for a hearing was postmarked more than 30 days after the Office's June 17, 2005 decision reducing his compensation based on his actual earnings as a delivery person. He is not entitled to a hearing as a matter of right. The Office considered whether to grant a discretionary hearing and correctly advised appellant that he could pursue his 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

¹ The Office found that appellant's request letter was received on August 8, 2006.

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.131(a)(b).

⁴ *William E. Seare*, 47 ECAB 663 (1996).

⁵ *Id.*

reconsideration, the Board finds that the Office properly exercised its discretion in denying appellant's request for a hearing. The Board therefore affirms the Office's August 18, 2006 decision denying appellant an oral hearing by an Office hearing representative.

CONCLUSION

The Board finds the Office properly denied appellant's request for an oral hearing before an Office hearing representative.⁶

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 14, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

⁶ 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).