

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

L.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Phoenix, AZ, Employer**

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**Docket No. 08-102
Issued: April 23, 2008**

Appearances:
Appellant, 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 October 12, 2007 appellant filed a timely appeal from a July 27, 2007 nonmerit decision of the Office of Workers' Compensation Programs that denied his request for an oral hearing as untimely filed. Because more than one year has elapsed from the last merit decision dated November 10, 2005 to 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.

ISSUE

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

FACTUAL HISTORY

On August 12, 2005 appellant, then a 52-year-old opening and distribution window clerk, filed an occupational disease claim alleging that he developed right shoulder and arm conditions in the performance of duty. He attributed his condition to repetitive motion on the job and first associated his condition with his employment in 1986. Appellant did not stop work.

In support of his claim, appellant submitted a July 20, 2005 report from Dr. Harry Sirounian, an osteopath, who noted appellant's complaints of "an old industrial injury" to the right shoulder and found probable subacromial impingement with a fairly large clavicular spur. He noted that appellant injured his knee on June 2, 2005 and diagnosed "rule out meniscal tear, left knee." Appellant provided a July 6, 2005 x-ray report from Dr. Arthur E. Clark, a Board-certified diagnostic radiologist, diagnosing "degenerative changes involving the acromioclavicular joint and acromion which can be seen with impingement syndrome."

By correspondence dated August 19, 2005, the Office requested additional information concerning appellant's claim. Appellant provided an undated statement explaining his duties and 1986 medical records concerning his shoulder.

By decision dated November 10, 2005, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that his shoulder condition was caused by his employment. Appellant submitted additional evidence after the Office's November 10, 2005 decision.

On June 11, 2007 appellant requested an oral hearing. The request was postmarked June 18, 2007.

By decision dated July 27, 2007, the Office denied appellant's oral hearing request on the grounds that it was filed more than 30 days after the November 10, 2005 decision. The Office considered the hearing request but found that the issue in the case could be equally well addressed by requesting reconsideration by the Office.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that, before review under section 8128(a) of this title, a claimant not satisfied with a decision of the Secretary 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.¹ Section 10.615 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.² The Office's regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.³

The Board has held that the Office, in its broad discretionary authority in the administration of the Act,⁴ 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

¹ 5 U.S.C. § 8124(b)(1).

² 20 C.F.R. § 10.615.

³ 20 C.F.R. § 10.616(a).

⁴ 5 U.S.C. §§ 8101-8193.

authority in deciding whether to grant a hearing.⁵ 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 Board precedent.⁶

ANALYSIS

The Board finds that the Office properly denied appellant's request for an oral hearing as untimely filed. Appellant requested an oral hearing following the Office's November 10, 2005 decision. His request was dated June 11, 2007 and postmarked June 18, 2007, more than 30 days after the November 10, 2005 decision was issued.⁷ Therefore, appellant was not entitled to a hearing as a matter of right.

The Office nevertheless exercised its discretionary authority by further considering appellant's request for a hearing in relation to the issue involved. The Office determined that the issue in the case could be equally well addressed by requesting reconsideration by the district Office and submitting new evidence in support of his claim. The Board finds that the Office appropriately exercised its discretion in denying appellant's hearing request. Accordingly, the Board finds that the Office's denial of appellant's untimely hearing request was proper.

CONCLUSION

The Board finds that the Office properly denied appellant's hearing request.

⁵ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁶ *Teresa M. Valle*, 57 ECAB __ (Docket No. 06-438, issued April 19, 2006). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

⁷ On appeal and in support of his June 11, 2007 hearing request, appellant submitted additional medical and factual evidence. The Board, however, notes that it cannot consider this evidence for the first time on appeal because the Office did not consider this evidence in reaching its final decision. The Board's review is limited to the evidence in the case record at the time the Office made its final decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2008
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