

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

B.C., Appellant

and

U.S. POSTAL SERVICE, Eden, NY, Employer

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Docket No. 08-305

Issued: April 25, 2008

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge

COLLEEN DUFFY KIKO, Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 7, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 5, 2007, which denied her claim for a traumatic injury, and on October 18, 2007 nonmerit decision denying her request for an oral hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

ISSUES

The issues are: (1) whether the Office properly denied her request for a hearing as untimely filed; and (2) whether appellant established that she sustained a traumatic injury in the performance of duty.

FACTUAL HISTORY

On November 24, 2006 appellant, then a 39-year-old rural mail carrier, filed a traumatic injury claim. On November 17, 2006 she experienced trouble breathing, throat swelling, constant cough and itchy body after exposure to hatching eggs in the boiler room where she worked.

On December 5, 2006 the Office requested additional information from appellant, including a physician's opinion as to how her injury occurred. Appellant submitted a supplemental statement and several unsigned progress notes. An October 27, 2006 note indicated that appellant worked for the post office, that live chicken and ducks came in the mail that day and she experienced a sore throat and difficulty breathing. A November 3, 2006 progress note listed her symptoms as coughing, wheezing, itchy, lightheadedness, heavy chest and sticky throat. A November 15, 2006 note recorded that appellant returned to work on November 6, 2006 and that all reactions subsided after one day. In a November 17, 2006 form report, a physician¹ stated that appellant was unable to work due to reactions that occurred at work and that she had an appointment with a specialist on December 18, 2006.

On January 5, 2007 the Office denied appellant's claim on the grounds that the evidence did not support that she experienced the employment factors alleged and that the medical evidence did not diagnose appellant with a condition.

On January 15, 2007 appellant requested an oral hearing. The envelope containing the request was postmarked January 18, 2007. Additional medical evidence was submitted.

In a September 21, 2007 letter, the Office informed appellant that it had received her request for an oral hearing. In an undated letter received on September 24, 2007, appellant again requested an oral hearing.

In an October 18, 2007 nonmerit decision, the Office denied appellant's oral hearing request on the grounds that her request was untimely as it was postmarked on September 14, 2007 and not made within 30 days of the merit decision.

LEGAL PRECEDENT -- ISSUE 1

Any 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.² If the request is not made within 30 days, a claimant is not entitled to a hearing or a review of the written record as a matter of right. Office regulations further provide that the "claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision."³ Although a claimant may not be entitled to a hearing as a matter of right, the Office has discretionary authority with respect to granting a hearing and the Office must exercise such discretion.⁴

¹ The signature is illegible.

² 20 C.F.R. § 10.616(a) (1999).

³ *Id.*

⁴ See *Herbert C. Holley*, 33 ECAB 140 (1981).

ANALYSIS -- ISSUE 1

The Board finds that appellant's request for an oral hearing was timely. A claimant requesting a hearing must send a request 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.⁵ In this case, the Office issued a merit decision denying appellant's claim on January 5, 2007. Appellant requested an oral hearing by letter postmarked January 18, 2007. Her request was made within 30 days of the merit decision. Therefore appellant is entitled to an oral hearing as a matter of right. The case will be remanded to the Office for a hearing to be granted and a merit decision issued on appellant's claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 18, 2007 be set aside and the case remanded to the Office for further proceedings consistent with this decision.

Issued: April 25, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁵ 20 C.F.R. § 10.616(a).