

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

T.J., Appellant

and

**DEPARTMENT OF THE AIR FORCE, SCOTT
AIR FORCE BASE, IL, Employer**

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**Docket No. 08-2138
Issued: February 5, 2009**

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 30, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated July 7, 2008, which denied her request for an oral hearing on the grounds that it was untimely. Because more than one year has elapsed from the last merit decision dated August 4, 2000, 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 a hearing as untimely filed.

FACTUAL HISTORY

On May 22, 2000 appellant then a 57-year-old medical records file clerk, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome from repetitive work with her hands, arms and wrists.

In an August 4, 2000 decision, the Office denied appellant's claim for compensation on the grounds that the evidence of record was insufficient to establish a causal relationship between an identified employment factor and the diagnosed medical condition.

On June 14, 2004 appellant requested a copy of her record which was forwarded to her by the Office on June 18, 2004. In a June 28, 2004 letter, she stated that there was a decision letter "dated 4 August 2004" attached to the Office's June 18, 2004 cover letter and asked the Office to advise her on how she could get the present case reopened. An Office claims examiner explained that the decision was issued in 2000, and the Office could not consider new information because appellant's appeal rights had been exhausted.

By a September 25, 2004 letter, appellant requested an oral hearing.

In a November 22, 2004 decision, the Office denied appellant's request for a hearing as untimely and stated that the issue could be equally well addressed by requesting reconsideration. Its November 22, 2004 decision, sent to appellant's address of record, was returned on December 15, 2004 and marked "address not known."

On July 7, 2008 appellant called the Office to inquire about the case stating that she was never contacted regarding the hearing. She verified that the Office had her correct address on file.

On July 7, 2008 the Office reissued its November 22, 2004 decision.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act and its implementing regulations, a claimant who has received a final adverse decision by the Office is entitled to a hearing by writing to the address specified in the decision 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.¹ 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.²

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, 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.³ The Office's procedures, which require the

¹ 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

² *Teresa Valle*, 57 ECAB 542 (2006).

³ *Bettye Richardson*, 59 ECAB ____ (Docket No. 08-693, issued August 19, 2008); *Marilyn Wilson*, 52 ECAB 347 (2001) (the Office has discretion to grant or deny a request made after the 30-day period, and the Office will determine whether a discretionary hearing should be granted).

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.⁴

ANALYSIS

The Office issued its decision denying appellant's claim on August 4, 2000. Appellant's September 25, 2004 request for an oral hearing is postmarked September 25, 2004, more than four years after the initial decision had been issued. Because the September 25, 2004 request was over 30 days after the August 4, 2000 decision, the Board finds that the Office properly denied appellant's request for a hearing as untimely filed.⁵

Appellant, on appeal, asserts that she never received the Office's November 22, 2004 decision. The record supports that, despite being properly addressed, this decision was returned to the Office as undeliverable. However, this did not adversely affect appellant's ability to appeal that decision to the Board as the Office reissued this decision on July 7, 2008, after which appellant filed the present appeal.

Although the Office properly determined that appellant's request was untimely, it nevertheless exercised its discretion by further considering her request for a review of the written record. It determined that appellant could equally well pursue her claim by submission of a request for reconsideration along with new evidence. Accordingly, the Board finds that the Office also properly exercised its discretion in denying appellant's request for a review of the written record.

Thus, the Board finds that the Office's denial of appellant's request for an oral hearing was proper under the law and the facts of this case.

CONCLUSION

The Board finds that the Office properly denied appellant's request for an oral hearing as untimely.

⁴ *P.B.*, 59 ECAB ____ (Docket No. 08-839, issued October 15, 2008); *Teresa Valle*, *supra* note 2.

⁵ *See supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 7, 2008 is affirmed.

Issued: February 5, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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