

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

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R.K., Appellant )  
and )  
DEPARTMENT OF VETERANS AFFAIRS, ) Docket No. 09-905  
VETERANS ADMINISTRATION MEDICAL ) Issued: October 21, 2009  
CENTER, Kansas City, MO, Employer )  
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)

*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  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On February 2, 2009 appellant filed a timely appeal from a December 18, 2008 nonmerit decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review denying her hearing request. As over a year has passed since the most recent merit decision in this case dated December 21, 2007, and the filing of this appeal dated February 20, 2009, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether the Office hearing representative properly denied appellant's hearing request as untimely.

## **FACTUAL HISTORY**

On September 18, 2007 appellant, a 49-year-old nurse, filed a traumatic injury claim (Form CA-1) for “pulled” left arm she alleged that occurred on August 18, 2007. She attributed her arm condition to her patient care duties which included repositioning patients on beds.

By decision dated December 21, 2007, the Office denied appellant’s claim.

On November 6, 2008 appellant requested an oral hearing.

By decision dated December 18, 2008, the Office’s Branch of Hearings and Review denied appellant’s request.<sup>1</sup> It determined that appellant’s request was untimely because it was not made within 30 days of the December 21, 2007 decision. The Office further exercised its discretion and determined that the relevant issue could be addressed by requesting reconsideration and submitting additional evidence.

## **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 for compensation 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

The Board has held that the Office, in its broad discretionary authority in the administration of the Act,<sup>5</sup> 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.<sup>6</sup> The Office’s procedures, which require the

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<sup>1</sup> Appellant requested reconsideration on January 27, 2008. The record reflects that no decision has been issued on this request and, therefore, her January 27, 2008 reconsideration request remains outstanding.

<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> 20 C.F.R. § 10.615.

<sup>4</sup> *Id.* at § 10.616(a).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *Marilyn F. Wilson*, 52 ECAB 347 (2001).

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.<sup>7</sup>

### **ANALYSIS**

Appellant's request for an oral hearing before the Branch of Hearings and Review was dated November 6, 2008, more than 30 days after the Office's December 21, 2007 decision. Accordingly, her request for an oral hearing was not timely and she was not entitled to a hearing as a matter of right. The Branch of Hearings and Review exercised its discretion in denying appellant's request for an oral hearing by finding that she could request reconsideration and submit evidence not previously considered to establish that her claim was filed in a timely manner.

The Branch of Hearings and Review properly exercised its discretion in determining whether to grant appellant's hearing request and noted that it had reviewed her claim and found that the issues involved in her claim could be addressed through submitting additional evidence and requesting reconsideration or by appeal to the Board. Thus, the Board finds that the Branch of Hearings and Review did not abuse its discretionary authority in denying appellant's untimely request for a hearing.

### **CONCLUSION**

The Board finds that the Branch of Hearings and Review properly denied appellant's request for an oral hearing as untimely filed.

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<sup>7</sup> *Teresa M. Valle*, 57 ECAB 542 (2006). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 18, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board