

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

D.D., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Charlotte, NC, Employer

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**Docket No. 09-547
Issued: September 28, 2009**

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 19, 2008 appellant, through her representative, filed a timely appeal from an August 4, 2008 merit decision of the Office of Workers' Compensation Programs denying her claim for a left knee meniscus tear and an October 15, 2008 decision of an Office hearing representative 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 the case.

ISSUES

The issues are: (1) whether appellant established that she sustained a left knee lateral meniscus tear in the performance of duty; and (2) whether the Office properly denied her request for an oral hearing.

FACTUAL HISTORY

On July 2, 2008 appellant, then a 38-year-old clerk, filed a traumatic injury claim (Form CA-1). She alleged that she hit her left knee on June 14, 2008 and again on June 17, 2008, at

which time her knee started to burn.¹ The employing establishment controverted the claim. By decision dated August 4, 2008, the Office accepted appellant's claim for a left knee contusion on June 17, 2008 employment injury. It denied the condition of left knee lateral meniscus tear based on a doctor's findings that most of appellant's symptoms were related to a direct contusion to the patellofemoral joint and not the lateral meniscus tear.

On August 28, 2008 appellant filed a request for an oral hearing on the August 4, 2008 Office decision before an Office hearing representative.

By decision dated October 15, 2008, an Office hearing representative found that appellant's case was not in posture for decision because the Office did not issue an adverse decision.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that a claimant not satisfied with a decision of the Office is entitled to a hearing before an Office hearing representative when the request is made within 30 days after issuance of the Office's decision.² Under the 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.³ 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.⁴

ANALYSIS -- ISSUE 2

On August 4, 2008 the Office accepted that appellant sustained a left knee contusion as a result of the June 17, 2008 employment injury. It also denied the condition of left knee lateral meniscus tear. Appellant filed a request for an oral hearing before an Office hearing representative on August 28, 2008, within 30 days of the issuance of the Office's August 4, 2008 decision. However, in an October 15, 2008 decision, an Office hearing representative denied an oral hearing on the grounds that the August 4, 2008 decision was not adverse to appellant's interests.

The Board finds that the Office hearing representative improperly denied appellant's request for an oral hearing. The August 4, 2008 Office decision was adverse to appellant's interests because it denied her claim for a left lateral meniscus tear. Appellant timely filed her request for an oral hearing on August 28, 2008, within 30 days of the August 4, 2008 decision.

¹ Appellant filed a separate traumatic injury claim for the June 14, 2008 injury under Office File No. xxxxxx224. The Office subsequently doubled these claims under the current master file, No. xxxxxx223.

² 5 U.S.C. § 8124(b)(1).

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

⁴ *Teresa Valle*, 57 ECAB 542 (2006); 20 C.F.R. § 10.616(b).

Therefore, the Board finds that appellant was entitled to an oral hearing, as a matter of right, on the issue of whether she sustained a lateral meniscus tear as a result of her employment.⁵

CONCLUSION

The Board finds that the Office improperly denied appellant's request for an oral hearing. In view of the Board's decision regarding appellant's request for an oral hearing, it is premature for the Board to adjudicate the case on its merits.⁶

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision.

Issued: September 28, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁵ See 5 U.S.C. § 8124(b)(1). See also *id.*

⁶ See *Carolyn O'Neale*, 53 ECAB 645 (2002).