

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

C.J., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
St. Louis, MO, Employer)

**Docket No. 09-2084
Issued: April 20, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 9, 2009 appellant filed a timely appeal of a July 24, 2009 decision of the Office of Workers' Compensation Programs, denying his request for a review of the written record by an Office hearing representative. Since more than 180 days has elapsed between the last merit decision on December 4, 2008 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. §§ 501.3(e) and 501.3(g).

ISSUE

The issue is whether the Office properly denied appellant's request for a review of the written record.

FACTUAL HISTORY

On September 9, 2008 appellant filed an occupational disease or illness claim (Form CA-2) alleging that he aggravated a left wrist condition as a result of his federal employment as a letter carrier. By decision dated December 4, 2008, the Office denied the claim for compensation. In a letter dated December 8, 2008 and received by the Office on December 11, 2008, appellant stated that he was "going to resubmit my claim." He indicated that he was trying

to gather relevant information from the Veterans Administration.¹ On February 10, 2009 appellant submitted medical evidence from his treating physicians. By undated letter received by the Office on June 4, 2009, he requested the return of materials in his case file so he could appeal the Office's decision.

In an appeal request form postmarked July 13, 2009, appellant sought a review of the written record. In an accompanying letter, he stated that his claim was denied because he was waiting for a letter from the military, and it took time to gather the necessary information.

By decision dated July 24, 2009, the Office found that appellant's request for a review of the written record was untimely filed. It further denied the request on the grounds that the issue could equally well be addressed by requesting reconsideration and submitting new and relevant evidence.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "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."² The regulations implementing this section of the Act at 20 C.F.R. § 10.615 provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record.³ The request "must be sent 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."⁴

ANALYSIS

The Office's merit decision was dated December 4, 2008. On December 11, 2008 appellant submitted a December 8, 2008 letter indicating that he was attempting to secure additional evidence regarding his claim and he intended to "resubmit" his claim. He did not request a review of the written record or an oral hearing. The December 4, 2008 Office decision provided four specific avenues of appeal: an oral hearing, review of the written record, reconsideration or appeal to the Board. Appellant's letter did not identify any of the specific appeal rights.

It was not until a letter postmarked July 13, 2009 that appellant requested a review of the written record. Since this was submitted more than 30 days after the December 4, 2008 Office decision, appellant is not entitled to a review of the written record as a matter of right. Although his request for a review of the written record was untimely, the Office has discretionary authority with respect to granting the request and the Office must exercise such discretion.⁵ In this case

¹ The Office had advised appellant to submit military medical records regarding a left wrist injury.

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.615.

⁴ *Id.* at § 10.616(a).

⁵ See *Cora L. Falcon*, 43 ECAB 915 (1992).

the Office advised appellant that the issue could be addressed through the reconsideration process and the submission of new evidence. This is considered a proper exercise of the Office's discretionary authority.⁶

On appeal, appellant noted that he had been trying to obtain paperwork from the Veterans Administration, and he had advised the Office that it would take time to receive this evidence. He stated that he did not understand why his request was denied as untimely, but the timeliness issue with respect to a request for a review of the written record is determined by the provisions of the Act and its implementing regulations. 20 C.F.R. § 10.616(a) requires that a claimant postmark a request for a review of the written record within 30 days of the Office's final decision. As noted, appellant did not send his request within 30 days of December 4, 2008. Therefore, it is untimely.

CONCLUSION

The Board finds that appellant's request for a review of the written record was untimely filed and the Office properly exercised its discretionary authority in denying the request.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 24, 2009 is affirmed.

Issued: April 20, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

⁶ *Id.*