

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

L.G., Appellant)	
)	
and)	Docket No. 10-267
)	Issued: August 9, 2010
U.S. POSTAL SERVICE, POST OFFICE,)	
Tuscon, AZ, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 9, 2009 appellant filed a timely appeal of a May 15, 2009 decision of the Office of Workers' Compensation Programs that denied her request for review of the written record as it was untimely filed. Because more than 180 days elapsed between the most recent merit decision of March 5, 2009 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the 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 review of the written record as untimely.

On appeal, appellant contends that the Office erroneously denied her claim for reimbursement for certain medically-prescribed items.

FACTUAL HISTORY

On August 11, 1987 appellant, then a 34-year-old part-time flexible carrier, filed a timely claim for an occupational disease alleging a back condition which she attributed to carrying heavy parcels during the course of her federal employment. The Office accepted appellant's

claim for lumbar strain, left shoulder strain/sprain and a cervical strain. Appellant received appropriate wage-loss compensation and medical benefits.

In a decision dated March 5, 2009, the Office denied appellant's request for a Tempur-Pedic mattress set, frame and pillow. It also denied her request for an ES600 Indoor Cycle exercise bike. The Office sent appellant a copy of her appeal rights with the decision.

On April 14, 2009 appellant requested review of the written record. She also submitted a letter dated April 16, 2009 requesting review of the written record.

In a May 15, 2009 decision, the Office denied appellant's request for review of the written record. It considered appellant's request under its discretionary authority and found that the issue in the case could equally well be addressed by requesting reconsideration and submitting new 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 her claim before a representative of the Secretary.¹ Sections 10.817 and 10.618 of the federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.²

The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days.³ Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, the Office may within its discretionary powers grant or deny appellant's request and must exercise that discretion.⁴

ANALYSIS

On appeal, appellant addressed the merits of her claim. Specifically, that she is entitled to reimbursement for a Tempur-Pedic bed and an exercise bike. As noted, more than 180 days elapsed between the March 5, 2009 merit decision denying her claim for reimbursement of these items and the filing of her appeal on November 9, 2009. The Board lacks jurisdiction to review the merits of the claim.⁵ The only issue before the Board is whether the Office properly denied appellant's request for review of the written record as untimely.

¹ 5 U.S.C. § 8124(b)(1).

² 20 C.F.R. §§ 10.616, 10.617.

³ *D.M.*, 60 ECAB __ (Docket No. 08-1814, issued January 16, 2009); *Joseph R. Giallanza*, 55 ECAB 186 (2003).

⁴ *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁵ *Id.* at §§ 501.2(c) and 501.3(d)(2).

Appellant filed her request for review of the written record on April 14, 2009, over 30 days following issuance of the March 5, 2009 Office decision. Because she failed to meet the 30-day filing requirement, she was not entitled to a review of the written record as a matter of right. In its May 15, 2009 decision, the Office exercised its discretionary authority and found that the issue could be addressed by requesting reconsideration before the Office and submitting additional relevant evidence. This basis for denying appellant's request is a proper exercise of the Office's discretionary authority.⁶ There is no evidence of record to establish that the Office abused its discretion. Accordingly, the Board finds that the denial of appellant's untimely hearing request was proper.

CONCLUSION

The Board finds that the Office properly denied appellant's request for a review of the written record as untimely.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 15, 2009 is affirmed.

Issued: August 9, 2010
Washington, DC

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

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

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

⁶ *Mary B. Moss*, 40 ECAB 640, 647 (1989).